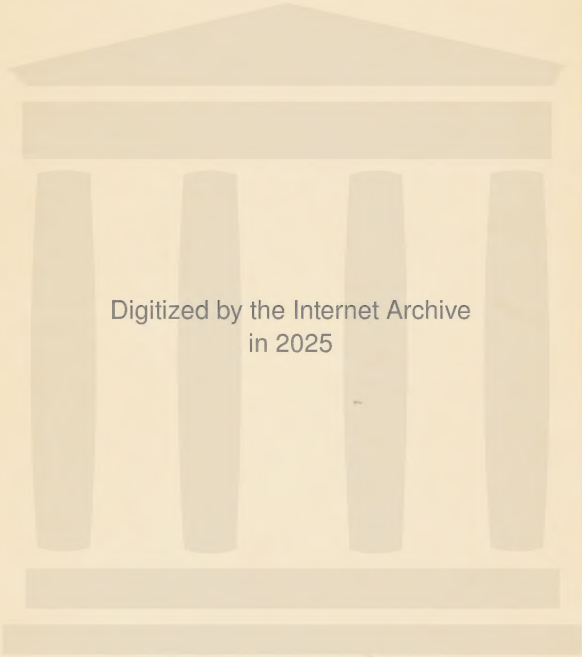
THE GOVERNMENT OF RELIGIOUS COMMUNITIES

BY HECTOR PAPI, S.J.



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The Government of Religious Communities

A COMMENTARY ON
THREE CHAPTERS OF THE
CODE OF CANON LAW

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The Government of Religious Communities

A COMMENTARY ON THREE CHAPTERS OF THE CODE OF CANON LAW

Preceded by a Commentary on the Establishment and Suppression of Religious Communities

BY

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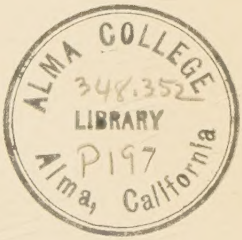

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PREFACE

IN our work on "Religious Profession" we mentioned our intention of publishing a treatise on "Religious Vows." Since then we have thought that at the present time, instead of the doctrine of the vows, it would be preferable to select a section of the Code dealing with religious, as we did in our preceding work. We have done so moreover to comply with many requests, which, since the publication of our first book, have reached us from various sources.

The main subject of this publication is "*The Government of Religious Communities*" taken from the Tenth Title[1] of the Second Book of the Code.

[1] In Canon Law the term *title* designates one of the main divisions of a book. Chapters and articles are subdivisions of a title. Taken in this sense a title comprises both the *heading* under which certain laws have been grouped together and the *laws* which follow the heading. Thus *The Tenth Title* referred to in this preface designates both the heading, *The Government of Religious Communities*, and the canons which have been grouped under that heading.

The Title on "*The Establishment and Suppression of Religious Communities*" (Institutes, Provinces, Houses), which in the Code precedes that on their government, is so intimately connected with the latter, and is so important that we thought it should not be omitted.

These two titles will be preceded by a Preliminary on "*Religious Communities and Their Members*" by which the Code opens this part on religious.

In all, this work will directly cover fifty-one canons, distributed as follows: five in the Preliminary on "*Religious Communities and Their Members*," seven in the First Title on "*The Establishment and Suppression of Religious Institutes, Provinces and Houses*," and thirty-nine in the Second Title on "*The Government of Religious Communities*." Besides these, it will cover also those canons which are not embodied in this section of the Code, but to which reference is made in the canons directly bearing on this matter as is the case of the canons on "Elections and Christian Burial."

As it was remarked in the preface to the

publication on "Religious Profession," the canons on religious affect also diocesan congregations in which the three religious vows are taken, unless the contrary appears from the context or the nature of the case. This assertion is sufficiently borne out by the fact that these congregations come under the definition, given in the Code, of religious institutes. Moreover in several canons the Code mentions them explicitly, and it does so not as if the other canons would not affect them, but because their status of diocesan congregations called for special provisions.

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The Government of Religious Communities

I. DEFINITION

1. Of the Religious State
2. Of a Religious Institute

CANONS 487, 488, § 1

The religious state is thus defined in the Code: "A permanent manner of community life, by which the faithful undertake to observe, not only the precepts common to all, but also the evangelical counsels by means of the vows of obedience, chastity and poverty." (Can. 487)

A religious community, or institute, is defined: "A society approved by competent ecclesiastical authority, whose members, according to its own laws, take public vows, either perpetual or temporary, but to be renewed after the time has elapsed, and thus tend to evangelical perfection." (Can. 488, § 1)

1. Definition of the Religious State

The definition of the religious state given in the Code is equivalent, in its substance, to the following:

(a) *A stable manner of life, including the vows*
(b) *Of obedience, chastity and poverty*
(c) *To be taken in a community*

(a) *A stable manner of life, including vows*

1. The religious state is called a *stable* manner of life for the very reason that it is a *state*. A manner of life may be more or less stable, but *some* degree of *stability* or permanency is essential to every state of life properly so called. Now, what is the degree of stability which belongs to the *religious* state? What is that which makes *this* manner of life a *state?* It is the taking of *vows*. By taking vows Christians not only purpose to lead this manner of life, but they promise God that they will be faithful in keeping their resolution. These vows may be perpetual or temporary; but even if they are temporary, the stability resulting from them is sufficient according

to the mind of the Church provided they are taken in a community in which these vows are renewed at stated times, for instance every year. (*Can.* 487)

(b) *The vows of obedience, chastity and poverty*

2. The faithful who wish to embrace the religious state must not be satisfied with fulfilling the *precepts*, that is, God's commandments; they must also follow the evangelical counsels, that is, the counsels proposed in the gospel, and they do this by practising the three virtues of obedience, chastity and poverty. (*Can.* 487)

(c) *To be taken in a community*

3. This state is called a stable manner *of community* life, because, as such, it cannot be taken up by individuals unless they become members of some community which professes this manner of living. (*Can.* 487)

2. Definition of a Religious Institute

4. In view of the third element of the religious state, just mentioned, the Code proceeds in *Can.* 488, n. 1, to give the defi-

nition of a religious community or institute. This definition includes first the three chief elements which in the present ecclesiastical discipline are essential to the religious state. Moreover (*a*) it lays down the necessity of the ecclesiastical *approval* and (*b*) refers to the three vows as being *public*. (*a*) The necessary *approval* may be given from the very first formation of a religious institute by the Holy See; but ordinarily it is given first by the Ordinary of the place where a religious community is founded and after this has sufficiently developed, it may be obtained from the Holy See through the S. Congregation of Religious. (*b*) The vows are *public* by the very fact that they are taken in a community approved by the Church and are accepted in the name of the latter by the legitimate superior. (*Can.* 1308, § 1) Consequently those who take them are responsible for their observance not only before God, but also before the public authority which sanctioned them. (*Can.* 488, n. 1)

II. EXCELLENCE OF THE RELIGIOUS STATE

1. A State of Perfection
2. Counselled by Christ

CANON 487.

"*The religious state . . . must be held in honor by all.*" (Can. 487)

1. A State of Perfection

5. From the above exposition of the definition of the religious state and of a religious institute it becomes clear in what sense this manner of life is called at times a state of perfection. The reason why it is so called is because it supplies the faithful with the means which are most suitable for acquiring perfection, while the very use of these means implies in itself some degree of perfection. The evangelical counsels supply the means for acquiring perfection because they permanently cut off the possession, or at least the use, of all that is apt to prove an obstacle to perfection. Moreover these counsels in themselves imply some degree of perfection because of the

sacrifice which they entail of what is dearest to nature. When therefore ecclesiastical writers speak of this state as being a state of perfection, they by no means claim that this is the state of those who *are* perfect, much less do they imply that persons who do not live in this state cannot acquire perfection, or that they cannot become even more perfect than religious. Perfection in fact consists in *perfect charity* accompanied by a readiness of will to do what one knows to be most pleasing to God. Now the evangelical counsels, while very useful, are not, of themselves, necessary for acquiring perfect charity; again, while they entail a sacrifice which cannot but be most pleasing to God, there are many cases in which it may be more pleasing to God that one should not make this sacrifice and should be satisfied with the interior detachment from all that may prove an obstacle to the perfect union with God.

2. Counselled by Christ

6. On the other hand, in spite of the fact that it is possible to acquire perfection even

to a very high degree of sanctity outside the religious state, no one can fail to recognize the peculiar excellence of this manner of life whose followers undertake most serious obligations for the sole purpose of arriving at a closer union with God by the constant practice of those virtues which are called evangelical counsels because inculcated by Christ himself. In fact Christ not only proposed to the faithful the practice of these virtues, but He confirmed His doctrine by His own example and, more than that, He placed on them a new sanction by promising a special reward to all who would listen to His call. When we reflect on the excellence of this state, whether by reason of what it implies, or in the light of the stand which Christ took in regard to it, we see the reason of the remark which in the Code follows the definition of the religious state, namely that this manner of life "must be held in honor by all." (*Can.* 487)

III. VARIOUS KINDS OF RELIGIOUS INSTITUTES

1. **Orders and Congregations**
2. **Clerical, Lay Institutes**
3. **Exempt, Pontifical, Diocesan Institutes**

CANON 488, nn. 2, 3, 4, 7

In the canons referring to religious the Code means by:

"Order, *every institute whose members make profession of solemn vows;* exempt institute, *an institute with either solemn or simple vows, not subject to the jurisdiction of the local Ordinary;* religious congregation, *or simply* congregation, *an institute whose members make profession of simple vows only, whether perpetual or temporary.*" (Can. 488, n. 2)

"Institute approved by the Holy See (religio juris pontificii), *every institute which has obtained from the Apostolic See either approbation or at least a decree of commendation* (decretum laudis); diocesan institute, *an institute established by the Ordinaries,*

which has not yet obtained this decree of commendation." (Can. 488, n. 3)

"Clerical institute, *an institute in which a great part of the members receive the order of priesthood; otherwise it is a* lay institute." (Can. 488, n. 4)

"Religious, *all those who have made profession of vows in any institute.* Religious with simple vows *those who have made profession of vows in a religious congregation;* regulars, *those who have made profession of vows in an order;* sisters, *religious women with simple vows;* nuns, *religious women with solemn vows or, unless it appears otherwise from the nature of the case or from the context, religious women whose vows are normally solemn, but which by a disposition of the Holy See are simple in certain regions.*" (Can. 488, n. 7)

1. Orders and Congregations

7. The terms *(a) order, regular, nun* or *(b) congregation, religious, sister,* designate the different status of religious institutes and their members in reference to the nature of their vows, as is clearly defined in the

text of the law. (*Can.* 488, nn. 2, 7) In this country, in most of the convents, nuns take only simple vows.

2. Clerical and Lay Institutes

8. Institutes in which a great part of the religious are raised to the priesthood are called *clerical;* otherwise they are called *lay* institutes. An order or congregation therefore is classed among lay institutes even though a few of its members are raised to the priesthood. (Can. 488, § 4)

3. Exempt, Pontifical, Diocesan Institutes

(a) *Definitions*

(b) *Internal and external government of religious institutes*

(c) *This twofold government in exempt, pontifical, and diocesan institutes*

(a) *Definitions*

9. An institute is called *exempt* if it has been withdrawn from the jurisdiction of the Ordinary of the place; *pontifical* (*juris pontificii*) if it has obtained a decree of approval or commendation from the Holy See; *diocesan* (*juris diocesani*) if, having been canonically erected by some Ordinary,

it has not yet obtained any decree of approval or commendation from the Apostolic See. (*Can.* 488, nn. 2, 3) This division points to the different degrees of dependence of an institute on the *local* and the *Roman* ecclesiastical authorities. There are three degrees of dependence, and accordingly there are three classes of institutes respectively corresponding to them. The extent of the dependence belonging to each of these three classes is given in detail in other canons. Here we give only a general idea of the character of each of them.

(b) *Internal and external government of religious institutes*

10. For this purpose, in the government of religious institutes we may distinguish an *internal* and an *external* government. The internal government is concerned with the spiritual welfare of *religious* as *such* and directs them in their relations to the other members of the same institute; the *external* government has for its purpose to direct their actions in their relations to the members of the Church at large. The

observance of religious discipline and of whatever is conducive to perfection in accordance with the general end of the religious state and of the particular end of each institute falls under the former heading; the observance of the ecclesiastical laws which tend to safeguard the public welfare of the Church and its members falls under the latter heading. Accordingly, the internal government sees to it that the rules and constitutions are observed; the external government takes care that religious observe the ecclesiastical laws, for instance the laws about the publication of books, or the alienation of Church property given them in trust; again the laws on liturgy whenever religious perform acts of public worship or lend their spiritual administration to outsiders.

(c) *This twofold government in exempt, pontifical and diocesan institutes*

11. With regard both to the internal and the external government, religious institutes which are *exempt* depend directly on the Holy See and not on the local Ordinary

except in cases expressly specified in the law. (*Can.* 615) *Pontifical* institutes which are *not exempt* and all *diocesan* institutes depend, in general, on the local Ordinary concerning the external government of their members. In this these two classes differ from exempt institutes and agree with each other, but they differ from each other concerning their internal government. The internal government of pontifical institutes is as a general rule reserved to the Holy See (*Can.* 618, § 2), whereas the internal government of diocesan institutes is vested chiefly in the Bishop. A few examples will make this clearer. We said that institutes which are exempt depend directly on the Holy See and not on the local Ordinary except in cases expressly specified in the law. Thus, for example, in spite of their exemption, they need the Bishop's faculty for preaching to the people (*Can.* 1338), and can be obliged by him to explain the gospel at mass on feast days of obligation in their own churches, even though not parochial. (*Can.* 1345) We said moreover that, with regard to the internal government,

diocesan institutes depend on the Ordinary of the place much more extensively than pontifical institutes. This difference is clearly brought out in the canons referring to episcopal visitation (*Cans.* 512, 618) and the election of the mother general (*Can.* 506, § 4), as will be seen when we come to the exposition of these two points.

12. Before going further we must add a remark. When we state that the internal government of religious institutes rests with the Holy See or the Ordinary of the place, we do not mean to say that these ecclesiastical authorities rule religious communities in the same manner in which religious superiors do. Religious superiors are continually in immediate contact with their community and have the immediate direction of its members. The ecclesiastical authorities intervene chiefly by exercising the right of supervision or giving general directions, and do not perform acts belonging to the ordinary government of the institute except within the limits set down in the law or in the constitutions, or in cases of necessity.

IV. ORGANIZATION OF RELIGIOUS INSTITUTES

1. **Dependent and Independent Local Communities**
2. **Houses and Provinces**
3. **Superiors**

CANON 488, nn. 2, 5, 6, 8

In nn. 2, 5, 6 and 8 of Canon 488 the Code gives also the meaning of the following terms. It explains namely that it means by:

"Monastic congregation, *the union of several independent* (sui juris) *monasteries under one and the same superior.*" (Can. 488, n. 2)

"Religious house, *every house of any institute whatever;* regular house, *every house of an order;* formal house, *every house in which dwell at least six professional religious, four at least of whom must be priests if it is a house of a clerical institute.*" (n. 5)

"Province, *the union of several religious houses under one and the same superior, and constituting part of the same Institute.*" (n. 6)

"Higher superiors, *the abbot primate, the abbot superior of a monastic congregation, the abbot of an independent monastery even*

though it form part of a monastic congregation, the superior general of the whole institute, the provincial superior, their vicars and all others who have powers equivalent to those of provincials." (n. 8)

1. Dependent and Independent Houses

13. Most commonly religious institutes are so organized that all their houses are united under the government of a superior to whom local communities are subject in all that appertains to religious discipline according to the constitutions. There are however some institutes in which the local communities have each their own *independent* government (*sui juris*), and if they are united under a common superior, they do not depend on him as fully as the communities of the first class just mentioned. This is true of some of the old monastic orders. The union of such independent houses under the same superior is called a *monastic congregation.* (*Can.* 488, n. 2)

2. Houses and Provinces

14. The term *religious house* applies to houses of all religious institutes, whether

of solemn or simple vows; the term *regular house* applies only to houses of institutes of solemn vows.

15. In order that a house may be recognized by the law as *formal* (*formata*), there must reside in it six professed religious of whom, when there is question of clerical institutes, four at least must be priests. (*Can.* 488, n. 5)

16. When owing to the too large number of subjects an institute is divided into several groups of houses under the same superior, who in turn is subject to the superior general, each group is called a *province*, and its immediate superior, *provincial*. (*Can.* 488, n. 6)

3. Superiors

17. Those who in the Code are called *higher superiors* are the following: the superior or *abbot* who bears the title of *primate*, the *abbot* who is superior of a *monastic congregation*, the *abbot* who is superior of an *independent monastery*, *superiors general*, *provincials*, their *vicars* and anyone who has the power of a provincial. (*Can.* 488, n. 8)

V. RULES OF INTERPRETATION

1. **The Code and the Constitutions**
2. **Canons Affecting Men and Women or Men Only**

CANONS 489–490

"*The rules and the particular constitutions of each institute, not contrary to the canons of this Code, retain their force; while those contrary to these canons are abrogated.*" (Can. 489)

"*The dispositions concerning religious, even when expressed in the masculine gender, apply equally to religious women, except it appears otherwise from the context or the nature of the case.*" (Can. 490)

1. The Code and the Constitutions

18. In reference to *Can.* 489, which deals with the bearing of the Code or the constitutions of an institute, we can make two suppositions: (*a*) In the constitutions there may be articles embodying some enactment which is *not contained in the Code*, but which at the same time is *not contrary* to any of its canons. For example: *Can.*

539 requires *at least* six months of postulancy in institutes of women with perpetual vows. If the constitutions of some institutes require nine months, they require more than the Code, but they are not contrary to it. (*b*) There may be articles, containing some enactment which is *contrary* to some canon of the Code. For instance: *Can.* 574 requires at least three years of temporary vows before the perpetual profession. If the constitutions of some institute prescribe only one year or none, on this point they are contrary to the Code. In accordance with the present Canon, in the first of these two suppositions the constitutions remain in full force; in the second, they are abrogated to the extent in which they disagree with the Code.[1]

2. Canons Affecting Men and Women or Men Only

19. When in a canon referring to religious the masculine gender is used, the

[1] If however in the matter in which the constitutions disagree with the Code, an institute had received from the Holy See a clear *privilege*, the privilege remains, unless *expressly revoked* by the Code. (*Can.* 4)

canon includes women also, unless from the context or the subject matter of the law it is clear that it affects only men, as, in general, is the case where explicitly or implicitly there is question of a clerical institute. (*Can.* 490)

VI. RULES OF PRECEDENCE

1. **Religious and Lay Persons**
2. **Various Classes of Religious**
3. **Religious and the Secular Clergy**

CANON 491

"*Religious take precedence over the laity; clerical institutes over lay institutes; canons regular over monks; monks over other regulars; regulars over religious congregations; religious congregations approved by the Holy See over diocesan congregations; for those in the same species the disposition of Can.* 106, *n.* 5, *is to be observed.*" (Can. 491, § 1)

"*But the secular clergy precede the laity and the religious outside their own churches and, in the case of a lay institute, even in their own churches; the cathedral or collegiate chapter, however, precedes them everywhere.*" (§ 2)

While the members of the Church are all equal in many respects, they often differ because of some spiritual power, or office

or quality which some may possess in preference to others. In view of this difference *Can.* 106 lays down some general rules which determine the right of precedence among various classes of persons in the Church. Owing, however, to the peculiar status of religious, *Can.* 491 gives special rules concerning the right of precedence of religious, which rules contain in many points an application of the general rules just mentioned. These special rules may be summed up under three headings: right of precedence between religious and lay people; among the various classes of religious; between religious and the secular clergy.

1. Religious and Lay Persons

20. Religious, even if not cleric, take precedence over lay persons who are not religious. (*Can.* 491, § 1)

2. Various Classes of Religious

21. *Clerical* institutes take precedence over *lay* institutes; *canons regular* over orders of *monks;* orders of *monks* over *other regulars; regulars* over *religious congregations;* among religious congregations,

pontifical institutes over *diocesan* institutes; finally among institutes of the same class, for instance among several orders of regulars other than canons or monks, or among several pontifical clerical congregations, precedence belongs to the institute which can claim having exercised this right without protest on the part of others, so as to enjoy what in law is called the peaceful possession of a right, and in case there is not sufficient evidence of this peaceful possession, precedence belongs to the institute which has been longer in a given place, namely in the same city or town. (*Can.* 491, § 1, together with *Can.* 106, *n.* 5)

3. Religious and the Secular Clergy

22. The secular clergy always take precedence over lay people as well as over religious belonging to a lay institute. They also take precedence over clerical religious institutes, except when these are in their own church; but this exception does not hold against the cathedral or collegiate chapter, which takes precedence over religious wherever these may be. (*Can.* 491, § 2)

Title I

The Establishment and Suppression of Religious Communities (Institutes, Provinces, and Houses).

I. THE ESTABLISHMENT AND SUPPRESSION OF RELIGIOUS INSTITUTES

1. The Establishment of Religious Institutes
2. The Suppression of Religious Institutes

II. THE ESTABLISHMENT AND SUPPRESSION OF RELIGIOUS PROVINCES

1. The Establishment of Religious Provinces of Pontifical Institutes
2. The Suppression of Religious Provinces of Pontifical Institutes
3. The Extension of Diocesan Institutes to Different Dioceses

III. THE ESTABLISHMENT AND SUPPRESSION OF RELIGIOUS HOUSES

1. The Establishment of Religious Houses
2. The Suppression of Religious Houses

I. THE ESTABLISHMENT AND SUPPRESSION OF RELIGIOUS INSTITUTES

1. **The Establishment of Religious Institutes**
2. **The Suppression of Religious Institutes**

CANONS 492–493

"*Bishops, but not a vicar capitular or a vicar general, have the power to establish religious congregations; but they should not establish these or permit them to be established without consulting the Apostolic See; in the case of tertiaries living in community life, it is further required that they be affiliated by the superior general of the first order to his institute.*" (Can. 492, § 1)

"*A diocesan congregation, even if in the course of time it spreads to other dioceses, remains diocesan and entirely subject in accordance with law to the jurisdiction of the Ordinaries, as long as it lacks pontifical approbation or the decree of commendation.*" (§ 2)

"*Neither the name nor the habit of an*

institute already in existence may be adopted by those who do not legitimately belong to it or by any new religious body. (§ 3)

"*No religious institute, even if only diocesan, which has once been legitimately established, even though it consist of but a single house, can be suppressed, except by the Holy See, to which is also reserved the right to dispose in such a contingency of its property, always respecting, however, the will of the donors.*" (Can. 493)

1. The Establishment of Religious Institutes

(a) *Authority by which new religious institutes may be established*
(b) *Conditions to be fulfilled in establishing new institutes*
(c) *Effects of a canonical establishment*

(a) *Authority by which new religious institutes may be established*

23. The establishment of a religious institute with *solemn* vows, namely of an *order*, is reserved to the Holy See. (*Cans.* 492, 1308)

24. Besides the Holy See, only bishops have power to establish new religious institutes with *simple* vows, namely religious *congregations*. Anyone, therefore, who wishes to found a new congregation must have recourse to the Bishop of the place where he wishes to have his congregation established. We say: only Bishops, because this power is not shared by vicars general nor does it belong to the administrator of a diocese while the see is vacant. (*Can.* 492, § 1)

(b) *Conditions to be fulfilled in establishing new institutes*

25. Bishops cannot exercise this power without having consulted the Holy See beforehand. (*Can.* 492, § 1)

26. In the case of a *third order*, it is also required that it be affiliated to the *first order* by the authority of the superior general of the latter. (*Can.* 492, § 2)

27. As a rule a *third order* is composed of *seculars*, living in the world, who, under the direction of some religious order and adopting its spirit, endeavor to acquire

Christian perfection in a manner compatible with the secular life, in accordance with rules approved by the Holy See. (*Can.* 702) Associations of this kind are called *third orders* in relation to the order of men whose spirit they follow. An order of men having an association of this kind, depending on it, is called the *first* order; the corresponding religious order of women, the *second* order and the corresponding association of seculars the *third* order. Thus, in the order of St. Francis, we have the Friars Minor, the Poor Clares and the Third Order of St. Francis.

28. While usually *third* orders are composed of *seculars*, they may form true *religious congregations*, provided they adopt common life, take religious vows, are canonically established by the authority of a Bishop and are incorporated in the *first* order by its superior general.

29. A new religious institute is not allowed to take the name or adopt the habit of another community already established. (*Can.* 492, § 3)

(c) *Effects of a canonical establishment*

30. Once a community has thus been legally established by the competent authority, it enjoys all the privileges of religious institutes, but, until it receives a decree of approval or commendation from the Holy See, even though it has spread over several dioceses, it remains *diocesan*, fully subject, according to law, to the authority of the respective Ordinaries. (*Can.* 492, § 2)

2. The Suppression of Religious Institutes

(a) *Authority by which religious institutes may be suppressed*
(b) *Disposal of the property belonging to them*

(a) *Authority by which religious institutes may be suppressed*

31. Once a religious institute, whether pontifical or diocesan, has been legally established, it can be suppressed only by the authority of the Holy See, even though it numbers only one house. (*Can.* 493)

(b) *Disposal of the property belonging to them*

32. When a religious institute is suppressed, it belongs to the Holy See, to the exclusion of all others, to determine to what purpose the property owned by it should be applied. If, however, the benefactors who had contributed to the foundation of the institute, in making their donation had laid down some conditions concerning the disposal of the property donated, these conditions must be faithfully fulfilled. (*Can.* 493)

II. THE ESTABLISHMENT AND SUPPRESSION OF RELIGIOUS PROVINCES

1. **The Establishment of Religious Provinces in Pontifical Institutes**
2. **The Suppression of Religious Provinces in Pontifical Institutes**
3. **The Extension of Diocesan Institutes to Different Dioceses**

CANONS 494–495

"*Only the Holy See has the power to divide a pontifical institute into provinces; to unite provinces already in existence, or change their boundaries; to establish new ones or suppress those already established; to separate independent monasteries from one monastic congregation and unite them with another.*" (Can. 494, § 1)

"*When a province has ceased to exist, the right to dispose of its property within the laws of justice and the will of the founders belongs, unless the constitutions make other provisions, to the general chapter, or, if the*

chapter is not in session, to the superior general in conjunction with his council." (§ 2)

"*A diocesan religious congregation cannot establish houses in another diocese except with the consent of both the Ordinary of the place in which the mother-house of the congregation is located and the Ordinary of the place to which it wishes to migrate; the Ordinary of the place of departure, however, should not refuse his consent without a grave reason.*" (Can. 495, § 1)

"*If a congregation happens to spread to other dioceses, no change may be made in its laws without the consent of each Ordinary in whose diocese a house is located, observing those points however, which in accordance with* Can. 492, § 1, *have been submitted to the Holy See.*" (§ 2)

1. The Establishment of Religious Provinces in Pontifical Institutes

33. The formation of one or more provinces may take place in different ways: *a*) when an institute is for the first time divided into provinces; *b*) when, after the

first formation of provinces, new ones need to be erected, and this is often done by dividing provinces already existing. In any case the establishment of provinces in pontifical institutes is reserved to the Holy See. (*Can.* 494, § 1)

2. The Suppression of Religious Provinces in Pontifical Institutes

(a) *Authority by which provinces may be suppressed*
(b) *Disposal of the property belonging to them*

(a) *Authority by which property may be suppressed*

34. According to what we said above (see ¶ 16) a province is the union of several religious houses under the same superior, who in turn is subject to the superior general. As the establishment of a province is the act by which this union is effected, so the *suppression* of a province is the act by which the same union is legally dissolved. There are acts which imply at the same time the suppression of one or more provinces and the erection of new ones. No matter

how the suppression takes place, in pontifical institutes it is reserved to the Holy See. Thus it is reserved to the Holy See to suppress a province without establishing a new one; to unite two in one; to change their limits; and it is also reserved to the Holy See to sever an independent monastery from a monastic congregation and unite it to another. (*Can.* 494, § 1)

(b) *Disposal of the property belonging to them*

35. As to the disposal of the property which belonged to a province completely suppressed: *a*) if the province had contracted obligations of justice, for instance by borrowing money, these of course must be fulfilled; *b*) in case founders and benefactors had laid down some conditions, again these cannot be disregarded; *c*) apart from these two cases, the disposal of its property must be made according to the constitutions, and if these are silent on this point, to determine how the said property has to be disposed of belongs to the general chapter, or, if the general chapter is not being held at the time, it belongs to the

superior general with his council. (*Can.* 494, § 2) In the case of a *division* of a province, an appropriate rule of action is supplied by *Can.* 1500. In keeping with this canon, the property which had been destined to meet the needs of the whole province as well as the debts which had been contracted for the same purpose should be divided proportionally, in an equitable manner, among the moral personalities resulting from the division; however, consideration should always be taken of pending obligations of justice, the will of founders and benefactors, and the particular constitutions of the institute.

3. The Extension of Diocesan Institutes to Different Dioceses

(a) *Authority by which diocesan institutes may extend to different dioceses*
(b) *Effects following the extension of diocesan institutes to different dioceses*

(a) *Authority by which diocesan institutes may extend to different dioceses*

36. For the opening of new houses in other dioceses a diocesan congregation needs the

consent both of the Ordinary of the place where the mother-house is located and of the Ordinary of the territories where the new foundations are to be established. (*Can.* 495, § 1) According to *Can.* 497 (see below, ¶ 39) the permission of the Ordinary of the place where a religious house is to be established is required in all cases. According to this canon, when, by opening new houses, a diocesan congregation extends its activity to other dioceses, also the permission of the Ordinary of the place in which the congregation had its origin is required. The extension of a diocesan institute to other dioceses is a step which demands serious consideration and it is only proper that it should not be taken without the consent of him by whose authority the institute was first established. There may be grave reasons for which the extension is not advisable; in which case the Ordinary has full right to refuse his consent.

(b) *Effects following the extension of diocesan institutes to different dioceses*

37. Once a diocesan institute has extended over different dioceses, no change can be introduced in its constitutions without the consent of all the respective Ordinaries. However, none of these Ordinaries can make changes in those points which were submitted to the Holy See by the Bishop who had to apply to Rome when the institute was first established. (*Cans.* 495, § 2; 492, § 1)

III. THE ESTABLISHMENT AND SUPPRESSION OF RELIGIOUS HOUSES

1. **The Establishment of Religious Houses**
2. **The Suppression of Religious Houses**

CANONS 496–498

"*No religious house shall be established, unless there is a reasonable possibility that provision will be made from its own revenues or from ordinary alms, or in some other way, for the proper maintenance and support of its members.*" (Can. 496)

"*The approval of the Apostolic See and the consent in writing of the Ordinary of the place must be had to establish a religious house belonging to an exempt order, whether it be a* formal *house or not; or to build a monastery of nuns; or to establish any religious house whatever in districts depending on the Sacred Congregation of Propaganda: in other cases, the Ordinary's permission is enough.*" (Can. 497, § 1)

"*The permission to establish a new house includes for clerical institutes the authorization*

for opening a church or public oratory adjoining the house, provided the enactments of Canon 1162, § 4 *be observed, as well as for celebrating the sacred functions in conformity to the requirements of the law; for all religious institutes the permission to establish a new house implies the authorization for all pious works proper to them, provided all the conditions expressed in the grant be kept.*" (§ 2)

"*To build and open a school or a hospital or any other edifice of a similar nature, separated from the house, even exempt, a special written permission of the Ordinary is necessary and sufficient.*" (§ 3)

"*The same formalities prescribed in* § 1 *must be observed for changing a house already established into other uses, unless the change has reference only to internal government and religious discipline, without prejudice to the terms of the foundation.*" (§ 4)

"*If a religious house, whether* formal *or not, belongs to an exempt religious body, it cannot be suppressed without the approval of the Apostolic See; if it belongs to a pontifical congregation it can be suppressed, with the consent of the Ordinary of the place, by*

the superior general; if the house belongs to a diocesan congregation it can be suppressed by the authority of the Ordinary of the place after he has heard the superior of the congregation, but without prejudice to Canon 493, *if the house be the only one of the said religious body, and without prejudice to the right of recourse, with suspensive effect, to the Apostolic See.*" (Can. 498)

1. The Establishment of Religious Houses

(a) *Conditions required for establishing new religious houses*

(b) *Authority by which new religious houses may be established*

(a) *Conditions required for establishing new religious houses*

38. Before opening a new religious house it is necessary to make sure, as far as one can prudently judge, that its members will be provided with suitable lodgings and sufficient means of support, whether these means be derived from the income of the house or from ordinary contributions or from other sources. If there is no sufficient foundation

for anticipating that these means will not fail, the new house should not be established. (*Can.* 496)

(b) *Authority by which new religious houses may be established*

a. Permission for opening a new house
b. Permission for performing the works falling within the scope of the institute
c. Permission for opening establishments separated from the religious house
d. Permission for changing the character of a religious house

a. Permission for opening a new house

39. For opening a new religious house, whether *formal* (*formata*) or not, belonging to an institute which is *exempt*, or for opening a monastery of nuns, or any religious house to be established in a territory which is subject to the S. Congregation of Propaganda, both the permission of the Holy See and the written consent of the Ordinary of the place are necessary. The permission of the Ordinary of the place is sufficient in any other case, that is, for opening a

religious house of a pontifical congregation which is *not exempt* or of a *diocesan* congregation, in a territory not subject to the S. Congregation of Propaganda. (*Can.* 497, § 1)

b. Permission for performing the works falling within the scope of the institute

Besides the object which is common to all religious, namely the acquirement of religious perfection, every institute may have some other object in keeping with its peculiar character and organization. Thus clerical institutes which are not purely contemplative, are destined to exercise the sacred ministry on behalf of the faithful and even those which are purely contemplative attend to the celebration of the divine mysteries besides the recital of the divine office. In keeping with this end, houses belonging to clerical institutes need to be provided, if possible, with a church or public oratory. Again, religious institutes not purely contemplative, whether clerical or lay, devote themselves to some work for the benefit of their neighbor,

such as, for instance, the intellectual or moral training of youth, the care of orphans, or of old persons or of the sick, the protection of young persons against the dangers of a sinful life as well as the rehabilitation of the fallen.

40. Accordingly, the permission to open a new house granted by the proper authority to a clerical institute, includes also the faculty to open near it a church or public oratory; but, although the religious have obtained the consent of the local Ordinary to establish a new house in the diocese or in a city, they must obtain his permission before they build the church or a public oratory in a definite place. (*Can.* 497, § 2, *Can.* 1162, § 4) The same permission to open a new house contains also the faculty to exercise the sacred ministry, in accordance, however, with the laws which govern the celebration of the sacred functions. (*Can.* 497, § 2)

41. Likewise, the permission to open a new house given to *any* religious institute, *whether clerical or lay*, includes the permission to perform the works which are in

keeping with its character and end; but rarely will it happen that in securing the permission to open a new house, no explicit mention will be made of the works to which an institute intends to devote itself in a given place. In any case, care must be taken to fulfil the conditions which may have been laid down when the permission was granted. (*Can.* 497, § 2) That in allowing a religious institute to open a house a Bishop may lay down some conditions is clear. Before granting the request to open a new house the Bishop has to see that the new foundation will not be prejudicial to other foundations already existing in the same place, never, however, losing sight of the benefit which may result for the common good from the new foundation. To safeguard in a reasonable manner the interests of previous foundations it may be necessary to lay down conditions which will somehow limit the activity of the new ones.

c. Permission for opening new establishments separated from the religious house

42. If an institute has already a house in a city or town and wishes to open an establishment, such as a school, a hospital, or the like, separated from the religious house, permission from the Ordinary of the place is all that is required, no matter what the status of the institute is, even though there is question of an exempt institute. (*Can.* 497, § 3)

d. Permission for changing the character of a religious house

43. It may happen that a religious community may wish to change the peculiar work for which originally it was established. The change may be such as to entail new relations of the religious to externs, as is the case when it has for its object the opening of a high school or college for seculars, or it may affect only the internal administration of the institute, as happens when there is question of a scholasticate or a novitiate. In the former case the permission required for effecting the change is

precisely the same as that which is necessary for the first foundation of a religious house according to § 1; in the latter case the law, as set forth in this canon, does not require the formalities required by § 1, provided the change does not interfere with the will of the founders. (*Can.* 497, § 4)

2. Suppression of Religious Houses

(a) *Suppression of houses belonging to an* exempt *institute*

(b) *Suppression of houses belonging to a* pontifical *institute* not exempt

(c) *Suppression of houses belonging to a* diocesan *congregation*

(a) *Suppression of houses belonging to an exempt institute*

44. A house belonging to an institute which is exempt cannot be suppressed without the intervention of the Holy See.

(b) *Suppression of a house belonging to a pontifical institute not exempt*

45. A house belonging to an institute which is not exempt may be suppressed

by the superior general, but not without the consent of the Ordinary of the place.

(c) *Suppression of a house belonging to a diocesan congregation*

46. A house belonging to a diocesan institute, unless it is the only house which the institute has (*Can.* 493), may be suppressed by the authority of the Ordinary of the place, who, however, must have consulted beforehand the superior of the congregation. After having consulted the superior of the congregation, the Bishop can suppress the house validly; and he can do this also licitly if he judges that there is sufficient reason for such a course of action even though the superior disagrees with him; but in case of disagreement the latter has the right to have recourse to the S. Congregation of Religious and while the case is pending the episcopal decree cannot go into effect. (*Can.* 498)

Title II

The Government of Religious Communities

CHAPTER I

SUPERIORS AND CHAPTERS

I. VARIOUS CLASSES OF SUPERIORS

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2. **The Ordinary of the Place**
3. **The Religious Superiors**

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I. VARIOUS CLASSES OF SUPERIORS

1. **The Roman Pontiff and the Cardinal Protector**
2. **The Ordinary of the Place**
3. **The Religious Superiors**

CANONS 499–503

"*All religious are subject to the Roman Pontiff as to their highest superior, and they are bound to obey him also by virtue of their vow of obedience.*" (Can. 499, § 1)

"*The Cardinal Protector of any religious body (except in peculiar cases it be otherwise expressly provided for) does not enjoy any jurisdiction either over the institute or over its individual members; he cannot interfere with internal discipline or the administration of their property: his only office is to promote the good of the religious body by his counsel and patronage.* (§ 2)

"*Religious are also subject to the local Ordinary, except those who have obtained from the Apostolic See the privilege of exemption, but without prejudice to the authority*

which the law grants, over them, to local Ordinaries." (Can. 500, § 1)

"*Nuns, who according to their constitutions are under the jurisdiction of regular superiors are subject to the local Ordinary only in the cases expressly mentioned in the law.*" (§ 2)

"*No religious body of men is allowed, without a special indult from the Holy See, to have religious congregations of women subject to it, or to retain, as specially entrusted to it, the care and direction of such institutes.* (§ 3)

"*Superiors and chapters have dominative power over their subjects to the extent granted them by their constitutions and by common law. In an exempt clerical body, however, they have ecclesiastical jurisdiction both* in foro interno *and* in foro externo." (Can. 501, § 1)

"*All superiors are strictly forbidden to interfere in matters pertaining to the Holy Office.*" (§ 2)

"*Neither abbots, primates, nor superiors of monastic congregations are invested with the full power and jurisdiction granted by*

the common law to higher superiors; but their power and jurisdiction must be interpreted according to their own constitutions and the special decrees of the Holy See, taking into consideration also the contents of Can. 655 *and* 1594, § 4." (§ 3)

"*The superior general of a religious institute has power over all its provinces, houses and members, to be exercised in accordance with the constitutions; the other superiors have it within the limits of their office.*" (Can. 502)

"*Higher superiors of exempt clerical institutes can appoint notaries, but only for the ecclesiastical transactions of their society.*" (Can. 503)

1. The Roman Pontiff and the Cardinal Protector

(a) *The Roman Pontiff*
(b) *The Cardinal Protector*

(a) *The Roman Pontiff*

47. All religious are subject to the Roman Pontiff as their highest superior. This subjection extends not only to matters referring to the external government, but also to matters belonging purely to the internal

government of religious. In other words, religious depend on the Roman Pontiff not only in the observance of the general laws of the Church, but also in the observance of the constitutions of each individual institute. The Roman Pontiff has the right to govern religious not only as *Christians* but also as *religious*. This right is of its own nature included in the plenitude of power given by Christ to St. Peter and his successors, to govern the faithful in all matters belonging to their spiritual welfare. It is true that religious life is not of obligation and that consequently, independently of the free choice of his subjects, the Roman Pontiff could not compel Christians to fulfil the obligations incumbent on the religious state, but if Christians freely choose to embrace this state, they must embrace it under the dependence of him who has from Christ full power over the faithful in every state directly connected with the spiritual end of the Church. In keeping with all this, *Can.* 499, § 1 declares that religious are subject to the Roman Pontiff as their supreme superior. It adds, moreover, that they are

bound to obey him also in virtue of their vow of obedience. This last clause seems to imply that in taking the vow of obedience religious promise, at least implicitly, to obey the Roman Pontiff in so far as they intend to obey those to whom Christ has entrusted the direction of the life to which they are devoting themselves. (*Can.* 499, § 1)

(b) *The Cardinal Protector*

48. At the request of a religious institute it has been the custom of the Holy See to appoint a Cardinal who acts as its protector or patron. A Cardinal Protector has no power of jurisdiction over the institute or its members nor can he interfere in its interior discipline or in the administration of its property. It only belongs to him to promote the spiritual and temporal welfare of the institute, now suggesting means for a more strict observance of religious discipline, now acting as their mediator in their controversies or interposing his good offices in their relations with the Holy See. (§ 2)

2. The Ordinary of the Place

49. Besides depending on the Holy See religious institutes are subject to the Ordinary of the place where they reside, although not all institutes depend on him to the same extent. (*Can.* 500, § 1. See above, ¶ 11 and *Can.* 512 on Canonical visitation)

50. Among the institutes which enjoy the privilege of exemption are to be numbered the communities of those nuns who by virtue of their constitutions are under the jurisdiction of regulars; such are, for instance, the Discalced Carmelite Nuns and the Poor Clares, depending respectively on the Discalced Carmelite Fathers and the Friars Minor of St. Francis; but even these nuns are subject to the Ordinary of the place in cases expressly specified in the law. (*Can.* 500, § 2)[1]

[1] At present in several countries some of these second orders are not exempt from episcopal jurisdiction. They are subject to the local Ordinary like the orders of nuns (for instance that of the Visitation), which do not depend on regulars by virtue of their constitutions. (Vermeersch, De Religiosis Institutis et Personis. Vol. I, n. 366; Piat, Praelectiones Juris Regularis. Vol. II, p. 5.)

51. In order that a religious institute of men may have jurisdiction over congregations of women or retain them under its special care and direction, a special apostolic indult is necessary. (*Can.* 500, § 3)

3. The Religious Superiors

(a) *Nature of their power*
(b) *Extent of their power*

(a) *Nature of their power*

52. All religious superiors, as well as religious chapters, rule their subjects by virtue of a power, distinct from the power of *jurisdiction* and called *dominative* or governing power (*potestas dominativa*). This governing power residing in all religious superiors differs, we say, from the power of *jurisdiction.* The former rises from religious profession, the latter from the institution of Christ. The *dominative* power comes directly from the act by which, in taking the vow of obedience in a community, Christians assume the obligation to work therein within the scope of the institute under the guidance of those mem-

bers to whom the direction of the society is entrusted by due appointment or election. *Jurisdiction* comes directly from Christ who gave to St. Peter and his successors the right to govern his church in all that directly or indirectly appertains to the spiritual welfare of the same Church and its members. (*Can.* 501, § 1)

53. From the difference in the origin or source of this twofold power it follows: (*a*) that the dominative power resides in *all religious* superiors, that is, in the head members of religious institutes, whether clerical or lay, whether men or women; the power of jurisdiction resides in its plenitude in the Roman Pontiff and, with due dependence on the Roman Pontiff, in Bishops as well as in anyone else to whom the Roman Pontiff may wish to communicate it; (*b*) that religious superiors, *as such*, have *only* dominative power, unless the Roman Pontiff has communicated to them the power of jurisdiction. In point of fact, the Roman Pontiff communicates jurisdiction to the religious superiors of those institutes which have been exempted by him from the juris-

diction of Bishops. Religious superiors therefore of exempt clerical institutes enjoy a twofold power over their subjects, the dominative power arising from religious profession and the power of jurisdiction communicated to them by the Roman Pontiff. It is by virtue of this latter power that they are able to exercise towards their religious subjects those acts of government, which bishops can perform towards their own subjects, such as granting the faculty to preach, to hear confessions, and the like. (*Can.* 501, § 1)

(b) *Extent of their power*

a. Extent of their dominative power
b. Extent of their power of jurisdiction
c. Extent of power in higher and lower superiors

a. Extent of their dominative power

54. In general the dominative power extends to all matters to which the vow of obedience contained in religious profession extends. But the vow of obedience has limits, which limits vary in accordance

with the peculiar end and character of different institutes. And as the end of an institute as well as the means to be employed for reaching it are determined by the constitutions, it has been customary to express these limits by saying that the vow of obedience has to be understood in accordance with the constitutions. The Code uses a similar expression concerning the extent of the corresponding dominative power of religious superiors. Moreover, the Code refers to this power as to be understood conformably also to the universal law, that is, in conformity with the general laws concerning religious. (*Can.* 501, § 1) Thus, for instance, formerly in accordance with the constitutions, superiors had the right to demand from their subjects an account of their conscience, but several years ago this power was taken away from superiors of lay institutes and the Code has taken it away from superiors of all religious institutes. (*Can.* 530)

b. Extent of their power of jurisdiction

55. The power of jurisdiction residing in superiors of exempt clerical institutes embraces in general the acts of government belonging to episcopal authority, except such as are not compatible with the status of religious subjects, or are reserved by law to the Ordinary of the place or to the Holy See. Thus their jurisdiction does not extend to matrimonial cases, nor, directly, to matters belonging to the administration of an office which is held by a religious but which affects directly the subjects of the Ordinary, like the office of parish priest; again, their judiciary and coercive power does not extend to cases which come under the jurisdiction of the Holy Office like criminal cases in matters of faith. (*Can.* 501, § 2)

c. Extent of power in higher and lower superiors

56. The authority of superiors general extends over all the provinces and houses of the institute as well as over all its members, to be exercised in accordance with

the constitutions; the authority of provincials and local superiors is limited to their province and house respectively. (*Can.* 502) Not all the power and jurisdiction which the law grants to higher superiors is enjoyed by abbots, primates and superiors of monastic congregations. The power and jurisdiction of these superiors is defined in the constitutions of each monastic order and in particular decrees of the Holy See (*Can.* 501, § 3), but the Code itself gives to superiors of monastic congregations the power which superiors general have for dismissing subjects and receiving appeals. (*Cans.* 655, 1594, § 4) The higher superiors of exempt clerical institutes have power to appoint notaries, but only for matters which affect their own institute. (*Can.* 503)

II. APPOINTMENT OF RELIGIOUS SUPERIORS

1. **Their Requirements**
2. **Duration of Office**
3. **Appointment by Election**

CANONS 504–507

"*With due respect to the particular constitutions of each institute, which may require more advanced age and other important qualities, no one is fit for the office of higher superior unless he has been professed in that religious institute for at least ten years, reckoning from the time of his first profession; unless he be the offspring of a legitimate marriage; and, if there be question of a superior general or of the superioress of a monastery of nuns, unless they have completed their fortieth year; other higher superiors must have completed their thirtieth year.*" (Can. 504)

"*Higher superiors should not hold office for life, unless their constitutions determine otherwise; the period of office for minor local superiors should not extend beyond*

three years; they may, however, be reappointed for a second term if the constitutions allow it, but not for a third successive term in the same religious house." (Can. 505)

"*Before the election of higher superiors in the institutes of men, all and each member of the chapter shall promise on oath that they will elect those who before God they think should be elected.*" (Can 506, § 1)

"*In the monasteries of nuns the Ordinary of the place or his delegate, with two priests as tellers, should preside over the election of the superioress (without, however, entering the cloister), if the nuns are subject to him; otherwise the regular superior will preside; but even in this case the Ordinary should receive timely warning about the day and hour of the election and together with the regular superior, he may be present at the election either personally or by a delegate, and if he be present, may preside.*" (§ 2)

"*The ordinary confessors of these nuns shall not be appointed tellers.*" (§ 3)

"*In the congregations of women the Ordinary of the place in which the election is held shall preside over the election of the mother-general*

either personally or by a delegate; he shall further have the power in the case of diocesan congregations to confirm or annul the election at the bidding of his conscience." (§ 4)

"*In elections which are made by chapters, let the general law set forth in Canons* 160–182 *be observed, as well as those constitutions of the institute which are not contrary to the law.*" (Can. 507, § 1)

"*Let all avoid procuring votes either directly or indirectly for themselves or others.*" (§ 2)

"*Postulation* (postulatio) *can be admitted only in extraordinary cases and provided it is not prohibited by the constitutions.*" (§ 3)

1. Their Requirements

57. The office of higher superiors cannot validly be held by anyone who has not been professed ten years to be reckoned from the first profession; was not born in lawful wedlock and has not the requisite age, that is, forty years completed in the case of a superior general or of a superioress of a monastery of nuns, thirty years in the case of other higher superiors like provincials and superiors of monastic congregations.

The first profession of which there is question in this canon is, of course, the temporary profession for all those who either by virtue of the constitutions of their institute or in consequence of the general law contained in *Can.* 574 took temporary vows before being admitted to perpetual vows. Judging from the wording of the Index of the Code, where under the word *Illegitimi* reference is made to this canon, those who were not born of legitimate marriage are not debarred from the office of higher superior if they have been legitimized. Should the constitutions of an institute require a more mature age or other qualifications besides those mentioned in this canon, they must be adhered to. (*Can.* 504) The same proviso holds in the case in which the constitutions require certain qualities in lower superiors, of whom no mention is made in this canon.

2. Duration of Office

(a) *Of higher superiors*
(b) *Of lower superiors*

(a) *Duration of office of higher superiors*

58. As to higher superiors, they may be appointed for life, if the constitutions so determine, otherwise they must be temporary. The law itself does not put any limitation to their reappointment for successive terms, as it does with regard to lower superiors, but this limitation may be laid down in the constitutions.

(b) *Duration of office of lower superiors*

59. Lower superiors must not be appointed for a term exceeding three years. After this term they may be reappointed for another term of three years if the constitutions permit it, but they can not be reappointed immediately for a third term in the same house.

In keeping with the enactments contained in this canon (*a*) if the constitutions *expressly forbid* the reappointment of local superiors after three years, the reappointment cer-

tainly is not allowed by the law; (*b*) if on the contrary the constitutions *expressly allow* the reappointment, the reappointment is certainly admitted by the law; but (*c*) what if the constitutions are altogether silent on this point; what if, for instance, the constitutions say only that local superiors will be appointed for three years, without stating expressly whether a second appointment is allowed or forbidden? May in this case a superior be reappointed after the first term? It seems that he may. All that the Code requires is that the constitutions *permit* a reappointment, which words in the subject matter we are dealing with are verified if the constitutions do not forbid it.

60. On the other hand it is clearly set down in this canon that in no case is a third term without interruption allowed *in the same house*. From this last clause we may infer that after having served two successive terms in a house, a superior may be reappointed for a third term in another house. But while successive terms in different houses are not forbidden by the law, it would seem

that they should not take place without some grave reason, as for instance the scarcity of subjects fit to govern. To relieve local superiors of the burden of authority for a few years is likely to be advantageous both to the superiors and to the institute. To the superiors who will welcome the opportunity to devote themselves more freely to the life of ordinary religious and to the institute which will be able to avail itself of the good qualities that other members of the community may possess.

61. It has been authoritatively declared by the Pontifical Committee for the Authentic Interpretation of the Canons of the Code that the enactments of this canon on minor local superiors affect also those who are at the head of schools, hospitals and the like, if at the same time they are superiors of religious and have authority over them in matters of religious discipline. (June 2d and 3d, 1918. Acta Apostolicae Sedis, X. 344)

3. Appointment by Election

(a) *Special rules*
(b) *General rules*

As higher superiors are often appointed by election, the law devotes two canons to this form of appointment. In *Can.* 506 it gives some special rules to be followed in the election of higher superiors and in *Can.* 507 it declares that the general rules which are laid down in the Code for elections to ecclesiastical offices are also to be applied to the elections which are made by religious chapters.

(a) *Special rules*

Can. 506 distinguishes between elections which take place in institutes of men and those which take place in institutes of women, either nuns or sisters.

a. In institutes of men

62. In the case of institutes of men, before proceeding to the election of higher superiors, every member of the chapter has to promise under oath to elect him who in the Lord he judges should be elected. (*Can.* 506, § 1)

b. In monasteries of nuns

63. In the case of those nuns who are subject to the Ordinary, it is the latter who has the right and duty to preside over the election of the superioress either in person or through someone delegated by him; in the case of other nuns the office of presiding belongs to the regular superior; but even in this case, together with the latter, the Bishop also, either in person or through someone delegated by him, may assist at the election; and if he does assist he may preside. For this reason the Bishop should be notified in time about the day and hour when the election is to take place. The presiding officer must be assisted by two priests acting as tellers; but the ordinary confessors of the nuns whose superioress has to be elected are excluded from this office. (*Can.* 506, §§ 2, 3)

c. In congregations of women

64. In the case of other communities of women, the election of the mother general is presided over by the Ordinary of the place where the election is held or by someone

delegated to represent him; and if there is question of diocesan communities it belongs to the Ordinary to confirm or cancel the election as he judges best in the Lord. (*Can.* 506, § 4)

(b) *General rules*

a. Obligatory
b. Concerning the time
c. The convocation of the electors
d. The manner of voting
e. The persons excluded from voting
f. The essential requisites of a vote
g. The procedure of election
h. Election by compromise
i. The requisite number of votes
k. The acceptance of the office
l. The confirmation of the election
m. How to supply the negligence of the electors
n. Postulation (election by petition)

a. Obligatory

65. In *Canons* 160–182 the Code deals with the elections to ecclesiastical offices and gives the rules to be followed in holding such elections. *Can.* 507 declares that the

general rules just referred to must be observed also in the elections which are made by religious *chapters*. It may not be altogether certain whether, without prejudice to the special rules contained in the preceding canon, these general rules are obligatory also when there is question of elections made in chapters of *women*. In any case, certainly they are not obligatory when there is question of elections which take place in *councils*. (See below, ¶ 100)

66. This canon declares, moreover, that, besides the general rules prescribed by the Code, the rules also which the constitutions of each institute may prescribe must be observed, provided however the latter are not contrary to the former. Thus if the constitutions of an institute prescribe that the tellers who have to collect and count the votes must be *three*, they must be followed because not contrary to the Code which requires "at least" *two* tellers; but if the constitutions allow that the tellers (to be appointed by the electors) may be taken *from outside* the body of electors, they must be disregarded because contrary to the

Code which prescribes that the tellers must be taken from among the electors. (*Cans.* 507, § 1, 171, § 1)

67. In keeping with the general rules, this canon prescribes that all should abstain from endeavoring directly or indirectly to procure votes for themselves or others. (*Can.* 507, § 2)

68. Finally it expressly allows that in some extraordinary case that form of election which is called *postulation*, (request, petition), may be used, provided it is not forbidden by the constitutions. (*Can.* 507, § 3) We shall say a word about this form after having given in the following numbers the general rules concerning the elections properly so called.

b. Concerning the time

69. The election must not be deferred beyond three months after the vacancy of the office has become known, unless in some cases the law or the constitutions provide otherwise. In case the election is not attended to in time, the right devolves on the ecclesiastical superior to whom the law

gives the power to confirm the election, if there is question of one of those elections which need confirmation; otherwise it devolves on the ecclesiastical superior on whom the law or the constitutions confer the right to supply the negligence of the electors. (*Can.* 161)

c. The convocation of the electors

70. He who has to preside over the election must call all the electors in due form, appointing a reasonable time and a suitable place when and where the election has to be held, unless the constitutions or custom provide that this convocation must take place in some other way. (*Can.* 162, § 1) If some of the electors were not notified, but (*a*) they were present at the election, the fact that they were not called does not invalidate the election; (*b*) if they were not present and those who were neglected are more than one third of the whole body of electors, the election is invalid by law; (*c*) in other cases, namely if those who were neglected were not present and they constitute less than one third of the whole

body of electors, the election is not invalid, but on the appeal of anyone who was absent because not called, it may be declared invalid by the competent superior. (*Can.* 162, §§ 2, 3, 4)

d. The manner of voting

71. The votes must be given personally, that is, they cannot be given by letter or through a procurator unless the constitutions expressly allow it. In the case, however, of electors who are in the house where the election takes place, but who by reason of sickness cannot be present, they are not debarred from voting and their vote, to be given in writing, will be taken up by the tellers, unless the constitutions or lawful custom provide otherwise. (*Cans.* 163, 168)

e. The persons excluded from voting

72. Those who by law are excluded from voting are: (*a*) those who are incapable of performing a human act by reason, for instance, of mental deficiency; (*b*) those upon whom an ecclesiastical judge has passed either a sentence *declaring* that they incurred a censure or legal infamy (*infamia*

juris) or a sentence condemning them to one or the other of these two punishments; (*c*) those who have joined a heretical or schismatical sect, or openly held membership in such a sect;[1] (*d*) those who have

[1] The Latin text has "*qui sectae haereticae vel schismaticae* nomen dederunt vel publice *adhaeserunt.*" An expression similar to this is found in *Can.* 542, where, among those who cannot be validly admitted to the novitiate, are mentioned "*qui sectae acatholicae adhaeserunt.*" In our work, "Religious Profession," we translated this sentence: "*those who have once belonged to a non-Catholic sect.*" This translation has been criticized by some who hold that the Latin term "*adhaeserunt*" has not such a broad meaning as to include also those converts who have held membership in a non-Catholic sect in *good* faith.

In support of the view that the Latin term includes all who have held membership in a non-Catholic sect, whether they acted in good or in bad faith, we wish to remark that: 1) the same translation, namely *those who have belonged*, has been adopted in the *authorized* English version of this section of the Code on Religious, published by the Vatican Press, "intended (as stated in the Foreword) for those religious who cannot easily utilize the Latin text"; 2) in deference to our opponents, we have consulted several canonists, both American and Roman, who all agree that there is not sufficient reason for departing from the literal meaning of the Latin text by restricting it so as to include only fallen Catholics or those who are still non-Catholics; 3) since the Code has gone into effect, the S. Congregation of Religious has more than once granted dispensations from the law in question to converts who had been brought up in a non-Catholic sect, without having ever been Catholics before.

However, the law, as it stands, may still be looked upon

been deprived of active voice either by virtue of a *sentence* legally passed by a judge or by the force of some general or particular *law*. Also those who have not reached the age of puberty, that is, fourteen years in the case of men and twelve in the case of women, are debarred from voting at ecclesiastical elections, but members of religious institutes have already passed this age. (*Can.* 167, § 1)

All these are excluded from taking active part in elections to the following extent. That is: if in spite of the prohibition they cast their vote, *this* is null and void, but the *election* holds, with the exception of two cases: (*a*) When without the vote, which was cast by one of those excluded by the law, the person who has been elected would not have received the requisite number of votes. (*b*) When the person whose vote was null and void is one known to have been

by many as open to a too severe interpretation. And it should not be wondered at if, being asked for an authoritative answer from different sources, the Holy See would be willing to give a *milder* interpretation by adopting a meaning less comprehensive than that which had been intended when the law was first promulgated.

excommunicated with the intervention of an ecclesiastical judge. (*Can.* 167, § 2)

f. The essential requisites of a vote

73. In order to be valid, the vote: (*a*) must be given *freely*, that is, without compulsion or deception; (*b*) it must be *secret*, namely it has to be given in such a manner that the person who gave it may remain unknown; (*c*) it must be *certain*, that is it must be given in such a way as to make it clear that the elector *actually casts his vote* for a certain person; (*d*) it must be given to a certain person *absolutely*, without making the vote depending on some condition to be fulfilled by the person to whom the vote is given or by someone else; (*e*) it must sufficiently *determine* the person, by giving the person's name or a description which will not fit anyone else and by giving only one, not several names; (*f*) it cannot be cast in one's own favor. (*Cans.* 169, § 1, 170)

74. Moreover, electors are forbidden to make among themselves agreements which tend to bind the person who will be elected

to follow some line of action or to fulfil some condition, even though the object of the agreement be in itself good. By virtue of this prohibition it is forbidden to make agreements like the following: we promise that the one who will be elected, if he accepts the nomination, will do so and so. Conditions made this way before the election do not make the following election null and void, but have no binding force on anyone, and in spite of them the person elected has no obligation whatsoever to fulfil them. The reason why the law makes such agreements null and void is to provide for the freedom of the person who will be elected. Should such agreements hold, it might happen that subjects, otherwise worthy, would not accept the appointment on account of the obligation resulting from the preceding agreement. (*Can.* 169, § 2)

g. The procedure of election

75. The votes must be taken up by two tellers. (*a*) Unless these are appointed by the constitutions, they must be chosen by secret ballot from the body of electors.

Once chosen, they, together with the president of the meeting, if he be a member of the college of electors, must declare under oath that they will faithfully discharge their office and will keep the proceedings of the meeting secret, even after the election is over. (*Can.* 171, § 1) (*b*) The tellers must see that the electors, one after another, following the order of precedence, cast their vote with due secrecy and diligence. Once they have collected all the votes, in the presence of the presiding official they must compare the number of votes with the number of electors; they have to examine each vote and finally they must make known how many votes anyone has received, doing all this in the manner prescribed in the constitutions or established by legitimate custom. (§ 2) (*c*) If the number of votes which have been cast exceeds the number of electors, the whole ballot has no value whatsoever, and it must be repeated. (§ 3) (*d*) The votes have to be destroyed after each ballot, or at the end of the session in case several ballots take place at the same session. (§ 4) (*e*) All the proceed-

ings of the election must be accurately taken down by the secretary and after having been signed by at least the same secretary and the president and the tellers, they must carefully be kept in the archives. (§ 5)

b. Election by compromise

76. (*a*) In keeping with the form of election described so far, the voting is done by the electors themselves. There is another form of election, according to which the election is not made by the electors directly but by others chosen and empowered by them to perform the election in their name. This form of election is called *by compromise* (*per compromissum*) because it implies a common promise of all the electors that they will stand by the choice that their delegates will make. (*Can.* 172, § 1) These delegates do not need to be chosen from the body of electors, but, if the college of electors is composed of clerics, they must be priests under penalty of invalidity of the following election. (§ 2) (*b*) The electors are allowed to put some conditions which

the delegates will be bound to observe, unless they are contrary to the law. In this case they would have no binding force, although they would not make the agreement or compromise null and void. When no conditions have been added by the electors, the delegates will always have to follow the general laws regarding elections. (§ 3) (*c*) The compromise is also valid when only one delegate has been appointed. The delegate thus chosen cannot elect himself. In the case when the delegates are more than one, if any of them lacks one vote for being elected he cannot give it validly to himself. (§ 4) (*d*) The right to make the election given to the delegates ceases and goes back to the college of electors in the following cases: if the college revokes the mandate before the delegates have begun to exercise their right; if any of the conditions which had been added by the electors fails or is disregarded; finally once the election has been made, even though it happens to be invalid. (*Can.* 173)

i. The requisite number of votes

77. In *Can.* 174 it is enacted that the person who has to be pronounced by the president of the college as having been elected is that one who has received the number of votes required by *Can.* 101, § 1, n. 1. According to this canon the requisite number is the *absolute* majority of valid votes, that is, of votes validly given. One has received the absolute majority if, by dividing the total number of valid votes by two, he has the larger number in his favor. Thus if the number of votes is 30 or 31, the absolute majority is constituted by 16; if it is 32 or 33, 17 constitutes the absolute majority and so forth.

If at the first ballot no one has received the absolute majority, a second ballot must be taken up. If this also fails, a third ballot will follow. If in this nobody has received the absolute majority, the *relative* majority will be sufficient for completing the election. The relative majority supposes that the valid votes are divided in more than two groups and it is constituted

by the largest of them. Thus, if the number of votes is 30 and the votes are divided in three groups, numbering respectively 9, 10 and 11 votes, the group of eleven will constitute the relative majority.

If at this third ballot no one has received the relative majority because the higher groups are all of the same number, the president of the body of electors may, if he so chooses, complete the election by giving his decisive vote to one of those who received the highest number.

If the president does not make use of this privilege, among those who received an equal number, that candidate is *ipso facto* elected who is the senior by ordination, or, if there is not question of a college of clerics, or all have been ordained at the same time, the senior by profession, or finally if all made their profession at the same time, the senior by age. (*Can.* 101, § 1, n. 1)

k. The acceptance of the office

78. The person who has been elected must immediately be officially notified, and at least within eight days, to be reckoned

from the time when the notification was made, he must declare whether he accepts the office; otherwise he loses all right to it. If he refuses to accept the office, the college of electors within a month from the time the refusal became known to them, must proceed to a new election. If he accepts, he becomes immediately the rightful incumbent of the office unless the office is one of those for which election is not sufficient without confirmation. (*Cans.* 175–176)

l. The confirmation of the election

79. When the confirmation of the election is necessary, it must be asked by the person who has been elected within eight days from the day when he accepted the election; otherwise he loses all right, unless he can prove that some obstacle prevented him from asking for the necessary confirmation in time. If the person is fit for the office and the election was made according to law, the ecclesiastical superior cannot refuse to give the decree of confirmation. This decree must be in writing. Soon after this

confirmation, the person obtains full right in the office. (*Can.* 177)

m. How to supply the negligence of the electors

80. In case the election is not made within the time prescribed, or the college of electors is deprived of this right as a punishment, the right to make the appointment devolves on him who should have confirmed the election or on him on whom this power is conferred by law or particular statute. (*Can.* 178)

n. Postulation (election by petition)

81. In case the person whom the electors judge to be the best fitted for the office is debarred from it by the law on account of some impediment, they cannot elect him but they are allowed to ask the competent superior to allow this person to have this office in spite of the impediment. This action on the part of the electors is called *postulatio*, a Latin word that means request or *petition*. When there is question of the election of superiors, this postulation

is allowed by the Code in extraordinary cases, provided it is not forbidden by the constitutions. (*Can.* 507) Extraordinary cases might be when there is no one else fitted for the office, or circumstances require someone endowed with extraordinary qualities, and only the person otherwise prevented by the law possesses them. In order that this postulation or petition be valid, it must come from the electors themselves, not from the delegates chosen by compromise unless the latter have received from the former a special power to this effect. Ordinarily the absolute majority of votes is sufficient for presenting this *petition*, but if some of the electors prefer the common form of *election* and agree on some eligible person, two thirds of all the valid votes are necessary for using this form by petition. Finally this petition must be presented within eight days to the ecclesiastical superior who has the right to confirm the election provided he has the power to dispense from the impediment; otherwise it must be presented to the Roman Pontiff or to someone who has faculty in the matter. After the

petition has been admitted by the competent superior, and has been accepted by the person in whose favor it was made, the latter acquires immediately full right in the office. (*Cans.* 179–182)

III. OBLIGATIONS OF RELIGIOUS SUPERIORS

1. **Residence**
2. **Instruction**
3. **Report to the Holy See**

CANONS 508–510

"*Let every superior live in his own house and not absent himself from it except in accordance with the constitutions.*" (Can. 508)

"*Every superior must promote among his subjects the knowledge and the execution of the decrees of the Holy See which concern religious.*" (Can. 509, § 1)

"*Local superiors should take care:* (1) *That their own constitutions be read publicly at least once a year, on fixed days, and likewise those decrees which the Holy See will order to be read publicly.* (2) *That at least twice a month, without prejudice to the enactment of* Canon 565, § 2, *there be given an instruction in Christian catechism to lay members and domestic servants, suited to the condition*

of the hearers, and, especially in lay institutes, a pious exhortation to all members of the house." (§ 2)

"*Abbot primates, superiors of monastic congregations, and superiors general of pontifical institutes must every fifth year, or oftener if the constitutions so prescribe, send in writing an account of the condition of their institute to the Holy See, signed by themselves and by the members of their council, and, in the case of congregations of women, signed also by the Ordinary of the place in which the mother general with her council resides.*" (Can. 510)

1. Residence

82. In order that superiors may take the proper care of their subjects, they must reside in their own house and not be absent except in so far as the constitutions allow. As to the *local* superiors, usually the house referred to in this canon will be the house where the community is located. If, on account of special circumstances, a community is divided so as to have two different residences under the same superior, these

should not be so far apart from each other that the superior residing in one of them cannot deal personally with the members living in the other. As to *higher* superiors, the constitutions or custom will determine the house of their habitual residence from which they may more easily be absent than local superiors, especially at the period of the canonical visitation. (*Can.* 508)

2. Instruction

(a) *Decrees of the Holy See*
(b) *Constitutions of the institute*
(c) *Religion*

(*a*) *Decrees of the Holy See*

83. All superiors are bound to take care that the apostolic decrees concerning religious will become known to their subjects. (*Can.* 509, § 1) Moreover local superiors will take care that the law prescribing the public reading of some decrees be observed by having them read to the community every year on appointed days. (*Can.* 509, § 2, n. 1) In connection with these enactments, it may be well to add a few remarks. (*a*) How will the superiors

themselves become acquainted with new pontifical decrees? As to superiors of clerical institutes there can be no difficulty, as these decrees are always promulgated in the official pontifical publication: ACTA APOSTOLICAE SEDIS. As to superiors of lay institutes, who may not have at hand the pontifical publication just mentioned, they will easily come to the knowledge of new apostolic decrees through the official diocesan paper or some other Catholic periodical in which the decrees of the Holy See of common interest are published. (*b*) This action of superiors urged in this canon is not an official communication by which the Holy See promulgates its decrees to religious. The apostolic decrees are promulgated by the very fact that they are published in the official periodical ACTA APOSTOLICAE SEDIS. Superiors have only to see that what has been promulgated become known to their subjects and be observed by them. This is in keeping with the wording of this canon where it is said that every superior should *promote* among his subjects the knowledge and execution of the decrees of the Holy See.

(b) *Constitutions of the institute*

84. Local superiors must have the constitutions of their institute read publicly on fixed days every year. (*Can.* 509, § 2, n. 1)

(c) *Religion*

85. They will also see that at least twice a month a catechetical instruction be given to lay members of the community as well as to workmen, at least to those who live in the religious house. They must likewise take care that at least twice a month, especially in the case of lay institutes, a pious exhortation be given to all the members of the religious community. (*Can.* 509, § 2, n. 2)

3. Report to the Holy See

86. Every five years, or oftener, if it is so prescribed in the constitutions, abbots, primates, superiors of monastic congregations and superiors general of pontifical institutes must send to the S. Congregation of Religious an account of the status of their order or congregation. This report has to be embodied in a document to be

signed by the sender together with his council and, in the case of congregations of women, also by the Ordinary of the place where the mother general and her council reside.

The points which must be brought out in this report may be found in a set of questions which has already been drawn up by the Holy See. By virtue of a decree of the S. Congregation of Bishops and Regulars of July 16, 1906, this set of questions was to be sent to all the superiors general of pontifical congregations. Superiors who have not yet received it, may get it by applying to the S. Congregation of Religious.

IV. CANONICAL VISITATION

1. By the Religious Superiors
2. By the Ordinary of the Place
3. Rights and Duties of Visitor and Subjects

CANONS 511–513

"*The higher superiors of every institute who have been assigned to this office by their constitutions, shall at the time designated by these same constitutions, either personally or through others if they are legitimately impeded, visit all the houses under their jurisdiction.*" (Can. 511)

"*The local Ordinary, either personally or by a delegate, must every fifth year make a visitation of:*

1° *Every monastery of nuns immediately subject to himself or to the Holy See;*

2° *Every house whether of men or of women, of diocesan congregations.*" (Can. 512, § 1)

"*He must at the same time make a visitation of:*

1° *Monasteries of nuns subject to regulars, in matters concerning the law of enclosure; and further, in all other matters, if the regular superior has not made a visitation for five years.*

2° *Every house of clerical pontifical congregations even though exempt, in matters concerning the church, the sacristy, the public oratory, and the confessional;*

3° *Every house of lay pontifical congregations not only in matters mentioned in the preceding number, but also in the others concerning internal discipline, in keeping however with* Canon 618, § 2, n. 2." (§ 2)

"*As to what concerns the temporal administration, the enactments of* Can. 532–535 *shall be observed.*" (§ 3)

"*The visitor has the right and duty to question any religious who he judges ought to be questioned, and to acquaint himself with matters relating to the visitation; all the religious are obliged to answer according to the truth, nor is it lawful for superiors in any manner to hinder them from fulfilling this obligation or otherwise obstruct the full purpose of the visitation.*" (Can. 513, § 1)

"An appeal from the decisions of the visitor is admitted, but only with devolutive effect, unless the visitor has proceeded in a judicial manner." (§ 2)

1. By the Religious Superiors

87. The purpose of the canonical visitation, in general, is to promote religious discipline and the observance of ecclesiastical laws by correcting abuses which may have crept in and procuring an increase of fervor in all the members of the community. The visitation has to be made by the higher superiors, namely by provincials and superiors general. The constitutions determine to which of the two the office of visitor belongs and also how often the visitation has to be made. The superiors appointed by the constitutions must visit all the houses placed under their authority and must fulfil this duty by themselves unless they are prevented from doing so by some legitimate impediment, in which case they may entrust this office to someone else. (*Can.* 511)

2. By the Ordinary of the Place

88. The visitation to be made by the Ordinary of the place or by someone else delegated by him must take place every five years and extends to every house of those religious institutes which in accordance with *Can.* 512 are subject to it. In accordance with this canon we can divide all the religious institutes which fall under this law in two classes. With regard to one of these two classes, the law makes no restriction concerning the subject matter of the visitation; with regard to the other, the law specifies the points to which it should extend.

89. To the first class belong all diocesan congregations and those communities of nuns which are not subject to regulars. (*Can.* 512, § 1) In performing therefore the visitation of this class of communities, the Ordinary or his delegate has the right to inquire about the observance both of religious discipline and of the ecclesiastical laws in so far as the latter affect religious.

90. To the second class belong pontifical congregations whether lay or clerical, even

though exempt, and those communities of nuns which are subject to regulars, but within the following limits. (*a*) The visitation of the monasteries of nuns concerns only the law of *papal* enclosure, unless their regular superior has failed to make the visitation for five years, in which case no limit is placed to the subject matter of the episcopal visitation. (*b*) The visitation of clerical pontifical congregations is limited to the church, sacristy, public oratory and confessional. (*c*) The visitation of lay pontifical congregations embraces all that which has just been mentioned in the case of clerical congregations, and besides, it extends to matters of internal government but only concerning those points which are specified in *Can.* 618, § 2, n. 2 (*Can.* 512, § 2, nn. 1, 2, 3) Accordingly, the visitor may inquire whether religious discipline is kept in accordance with the constitutions; whether the integrity of doctrine and purity of morals have suffered in any way; whether the enclosure, though not papal, has been observed and whether the sacraments have been duly frequented at the proper times.

91. In the preceding paragraph no mention is made of an inquiry about the administration of property because, with regard to this point, § 3 of this *Canon* 512 enacts that the special provisions contained in *Canons* 532–535 must be followed.

3. Rights and Duties of Visitor and Subjects

(a) *Rights and duties of the visitor*

92. The visitor has the right and duty to question every religious and inquire about any point connected with the matter laid down in the preceding paragraphs, as in the Lord he deems it to be necessary for reaching the object of the visitation, which, as we remarked above, is to promote ecclesiastical discipline and the observance of ecclesiastical laws. (*Can.* 513, § 1)

(b) *Rights and duties of the subjects*

93. In keeping with this office of the visitor, all religious are bound in conscience to answer him according to truth and religious superiors are strictly forbidden to put any obstacle to the fulfilment of their obligation and to foil in any way the object

of the visitation (*Can.* 513, § 1) either, for instance, by minimizing the right of the visitor, or using threats against those who are apt to make unpleasant remarks, or arranging things so as to keep certain subjects away from the house at the time of the visitation. (*Can* 513, § 1 and *Can.* 2413, containing respectively the *law* on this point and its *sanction.*)

94. Should, however, religious superiors or their subjects feel that an order of the visitor is unreasonable or unjust, they can have recourse to the higher authorities; but this recourse, *as a rule*, has only a *devolutive*, not a *suspensive* effect, that is, in spite of the recourse, the order of the visitor *goes into effect* until the higher authority will decide what has to be done. We say *as a rule*, because the recourse or appeal will have a *suspensive* effect if in taking the necessary measures the visitor acted in a judicial manner. (*Can.* 513, § 2)

To make this last point clear, we must remember that, in keeping with the object of the visitation, a visitor is supposed to act more like a father than like a judge. His

object is to correct abuses, not to punish the offender. (*Can.* 345) Hence the remedies which he has to take must be of a kind for which the law does not require the formalities of a trial, like paternal admonitions, executive orders enforcing the rule or the law, and other similar extra judicial measures. Should he, however, find out that for the sake of the common good, in order to repair public scandal, a canonical punishment is necessary, he may proceed to inflict it (within the bounds of his power), but in doing so he will be exercising the office of a *judge* and consequently he will have to observe the formalities which the law prescribes for inflicting ecclesiastical punishments properly so called. In such cases the appeal will have a *suspensive* effect, that is the decree of the visitor *will not go into effect* until the higher authority will decide otherwise.

V. PAROCHIAL RIGHTS AND DUTIES

1. Last Sacraments
2. Christian Burial

CANON 514

"*In clerical institutes superiors have the right and the duty, either personally or through another, to administer the Viaticum and extreme unction in case of sickness to the professed and novices, and to others who by reason of service or education, or hospitality or ill health live day and night in the religious house.*" (Can. 514, § 1)

"*In a house of nuns, the ordinary confessor or the one taking his place has this right and duty.*" (§ 2)

"*In any other lay institute, this right and duty pertain to the parish priest or to the chaplain appointed by the Ordinary to replace the parish priest according to* Canon 464, § 2." (§ 3)

"*For funerals, the enactments of* Canons 1221 *and* 1230, § 5, *are to be observed.*"

1. Last Sacraments

(a) *In clerical institutes*
(b) *In lay institutes*

(a) *In clerical institutes*

95. In all clerical institutes, even though not exempt, superiors have the right and duty to administer the Holy Viaticum and extreme unction to two classes of persons: first, to the members of the community, whether professed or novices; second, to all others who, though not members of the community, live day and night in the same religious house whether as workmen, or pupils, or boarders, or patients. As the law requires expressly that the persons belonging to this second class should live in the religious house day and night, superiors cannot exercise this right in the case of those who stay with the community only during day time, like day scholars or workmen who in the evening go to their homes. (*Can.* 514, § 1)

(b) *In lay institutes*

a. Of nuns
b. In other lay institutes

a. Of nuns

96. In monasteries of nuns the same right and duty rests with the ordinary confessor or with the priest who takes his place. The one therefore who has the same right as the ordinary confessor must be someone who for the time being replaces the ordinary confessor of the community because the latter is prevented from fulfilling his office by illness or some other legitimate cause. (*Can.* 514, § 2)

b. In other lay institutes

97. In other lay institutes it is the parish priest of the place where the house is located who has this right and duty; or the chaplain of the house, if the bishop, availing himself of the faculty which the law gives him in *Can.* 464, § 2, has exempted the religious community from the jurisdiction of the parish priest of the surrounding territory and has made the chaplain *pro tempore* pastor of the same community. (*Can.* 514, § 3)

2. Christian Burial

Concerning the burial of religious, *Can.* 514, § 4 refers us to *Can.* 1221 and 1230, § 5. The chief enactments contained in these two canons are the following.

98. The remains of religious, whether professed or novices, are to be carried to the church or oratory of the religious house, or at least, of the institute, to which they belonged. But, as *novices* are free to choose the church where the sacred obsequies are to be held (provided the church be one of those from which according to *Can.* 1225 one may choose to be buried), *their* remains are to be carried to the place of their choice, if they had made use of this right. In any case it is the superior who has the right to perform the ceremonies connected with the carrying of the body to the church. (*Can.* 1221, § 1)

When religious die outside the religious house, and the church or oratory of their institute is too far away, their remains should be carried to the church of the parish where they died, except when there

is question of novices, who had chosen another church for the sacred obsequies, or when superiors are willing to have the remains of the deceased carried to the church or oratory of their institute. (*Can.* 1221, § 2)

In the case of religious women: if they are exempt from parochial jurisdiction, the sacred obsequies are performed by their chaplain, otherwise by the parish priest or by some one else with his permission. (*Can.* 1230, § 5)

VI. HONORARY TITLES

CANON 515

"*Titles, that are merely honorary, of a dignity or office are forbidden; only titles of higher offices which religious have actually discharged in their own order are tolerated, provided this is allowed by the constitutions.*" (Can. 515)

99. Titles purely honorary by which dignities and offices are designated are forbidden to religious; in other words religious are forbidden to use titles belonging to dignities and offices which they do not actually hold. Only by way of exception is it tolerated that they retain the titles of higher offices which they may have held before, like the title of ex-provincial or ex-general, provided this is allowed by the constitutions. (*Can.* 515)

VII. COUNCILS, BURSARS (TREASURERS) AND PROCURATORS

1. **Councils**
2. **Bursars (Treasurers)**
3. **Procurator General**

CANON 516

"*The general superior of every religious institute or monastic congregation, every provincial, and local superior at least of a* formal *house, should have their consultors whose approval or advice they must ask according to their constitutions and the sacred canons.*" (Can. 516, § 1)

"*There must be also bursars (treasurers) for the administration of temporalities; namely — a general, a provincial and a local bursar for the administration of the property of the whole institute, of each province and of each house, respectively, and all of these shall discharge their duties under the direction of their superiors.*" (§ 2)

"*The superior himself cannot discharge the office of general or provincial procurator: as to the office of local procurator, although*

it were better that it should be separated from that of superior, still it may be united with it, should necessity require that arrangement." (§ 3)

"*Where the constitutions make no provision for selecting the bursars, they shall be chosen by the higher superior with the approval of his consultors.*" (§ 4)

"*Every pontifical institute of men shall have a procurator general to be appointed in accordance with the constitutions, who shall transact the business of his own institute with the Holy See.*" (Can. 517, § 1)

"*Without consulting the Apostolic See, he should not be removed before the time prescribed in the constitutions expires.*" (§ 2)

1. Councils

100. Besides the *chapter* to which belong all the professed or a certain number of the senior professed, and which has to be convened at stated times to discuss and define the more important affairs of the community, the law prescribes that superiors should have a body of *councillors* to be chosen in the manner laid down in the

constitutions who have to assist them in the discharge of their office with their counsel and advice.

101. *All* superiors must have their councillors; namely not only the superior general and the provincial, but also local superiors, at least if their house is *formal.*

Superiors are bound to hear them whenever the constitutions or the law so prescribe. Sometimes it is only prescribed that superiors should not act without the *advice* of their councillors, sometimes it is required that for acting they must have their *consent.* In the former case the counsel or opinion is called *advisory* (*consultivum*) and the action of superiors is valid even though at variance with the advice of their consultors: in the latter case it is called *decisive* (*deliberativum*) and superiors are bound to follow it under penalty of invalidity, that is, they must choose the course of action recommended by all the members of their council or by the greater number of them. (*Cans.* 105, 101) Instances of the law requiring the decisive or merely the advisory opinion of their councillors are to be found

in *Can.* 575, § 2, where it is decreed that the former is necessary for admitting novices to the temporary profession, the latter is sufficient for admitting religious to the perpetual profession.

2. Bursars (Treasurers)

(a) *Three classes*
(b) *Incompatible with the office of higher superior*
(c) *Manner of appointment*

(a) *Three classes*

102. As the spiritual welfare of a community and its success in carrying out the peculiar work to which it has devoted itself require that proper care should be taken also of its temporalities, the law wisely enacts that the whole institute as well as every province and every house should have their own treasurer charged with the administration of their property. (*Can.* 516, § 2)

(b) *Incompatible with the office of higher superior*

103. Superiors have the right and duty to direct treasurers in the discharge of their

office; but, in general, they should not take up this office *themselves.* Only local superiors, in cases when it cannot be done otherwise are allowed to act in the capacity of treasurer. (*Can.* 516, § 3)

(c) *Manner of appointment*

104. As to the manner of appointment, let the constitutions be followed. If the constitutions are silent on this point, they must be chosen by the higher superior with the consent of his council. The law does not determine which of the two higher superiors, the general or the provincial, has to appoint them. (*Can.* 516, § 4)

3. Procurator General

(a) *His office*
(b) *Appointment and removal*

(a) *His office*

105. Pontifical institutes, more than diocesan institutes, are likely to transact business with the Holy See because of their more immediate dependence on the same. To facilitate this intercourse, the law pre-

scribes to all pontifical institutes of *men* to have a procurator general whose office is to represent them and act in their name in their dealings with Rome. (*Can.* 517, § 1)

As to pontifical institutes of *women*, the law does not prescribe anything on this point. It is well however that those which have no house of theirs in Rome should have there somebody who may act as their agent in transacting their business at least in matters of lesser importance, as, for instance, dispensations and the like. For this purpose they may choose one of those agents who are authorized by the S. Consistorial Congregation to exercise this office on behalf of Metropolitans and Bishops. These agents, though not altogether necessary, will prove very useful for expediting matters because of their practical knowledge of the method of dealing with the S. Roman Congregations.

(b) *Appointment and removal*

106. The procurator general has to be appointed in the manner prescribed in the

constitutions. Once duly appointed, he cannot be removed before the time set down in the constitutions, without the intervention of the Holy See. (*Can.* 517, § 2)

CHAPTER II

CONFESSORS AND CHAPLAINS

I. CONFESSORS

1. **In Clerical Institutes**
2. **In Institutes of Women**
3. **In Lay Institutes of Men**

II. CHAPLAINS

III. MANIFESTATION OF CONSCIENCE

I. CONFESSORS

1. **In Clerical Institutes**
2. **In Institutes of Women**
3. **In Lay Institutes of Men**

CANONS 518–528

"*In every house of clerical institutes there must be appointed, in proportion to the size of the community, several duly approved confessors with power, if there is question of an exempt institute, to absolve also from cases reserved in the institute.*" (Can. 518, § 1)

"Religious superiors having faculties for hearing confessions can, in conformity with the law, hear the confessions of those subjects who spontaneously and of their own accord ask them, but without a grave cause they must not do this habitually." (§ 2)

"Superiors must take care not to induce either personally or through another, by force or fear or persistent persuasion or in any other way, any subject to confess his sins to them." (§ 3)

"While the constitutions which prescribe or advise that confession be made at stated times to specially appointed confessors remain in force, should a religious, even if exempt, for his peace of conscience, go to a confessor approved by the Ordinary of the place, though not one of those specially appointed, the confession is valid and licit, and every privilege to the contrary is hereby revoked, and such confessor can absolve the religious even from sins and censures reserved in his institute." (Can. 519)

"To each house of religious women let only one ordinary confessor be assigned to hear the sacramental confessions of the entire com-

munity, unless on account of the large number of its members or for any other just reason there may be need of two or more." (Can. 520, § 1)

"*If any religious, for her peace of soul or for her greater progress in the ways of God, asks for some special confessor or spiritual director, let the Ordinary readily grant her request; however, he should take care that no abuse arise from this concession; and if any abuse should arise, let him carefully and with prudence eliminate it, with due regard to freedom of conscience.*" (§ 2)

"*To each community of religious women an extraordinary confessor must be assigned, who at least four times a year shall go to the religious house, and before whom all the religious should present themselves at least to receive his blessing.*" (Can. 521, § 1)

"*The Ordinaries of the dioceses in which there are communities of religious women shall appoint for each house some priests to whom the religious may easily have recourse in particular cases for the Sacrament of Penance, without the necessity of applying to the Ordinary of the diocese for every occasion.*" (§ 2)

"*If any religious asks for any of these confessors, it is not lawful for any superioress either personally or through others, either directly or indirectly, to ask the reason for such request, to oppose the request in word or deed, or to show in any way that she is displeased with it.*" (§ 3)

"*If, notwithstanding the enactments laid down in* Canons 520 *and* 521, *any religious, for the tranquillity of her conscience, should go to some confessor approved by the Ordinary of the diocese for hearing women's confessions, the confession, made in any church whatever or in any oratory even semipublic, is valid and licit, and any privilege whatever to the contrary is hereby revoked; nor can the superioress forbid this or inquire about the matter, even indirectly; and the religious are not bound to report to her on the matter.*" (Can. 522)

"*All religious women, when they are seriously ill, although there be no danger of death, can summon any priest approved for hearing the confessions of women, though not appointed for religious, and they may confess to him, during their serious illness, as often*

as they wish, nor can the superioress either directly or indirectly prevent them from doing so." (Can. 523)

"*For the office of ordinary and of extraordinary confessor of religious, there should be chosen, either from the secular clergy or among the religious with the permission of their superiors, priests who are eminent for integrity of character and for prudence; they should be moreover forty years of age, unless in the judgment of the Ordinary a just cause demand otherwise, but these confessors have no power* "in foro externo" *over their religious penitents.*" (Can. 524, § 1)

"*The ordinary confessor cannot be appointed extraordinary, nor, except in the cases mentioned in* Canon 526, *can he be appointed a second time as ordinary in the same community, unless a year has elapsed since he went out of office; the extraordinary confessor however can be immediately deputed ordinary confessor.*" (§ 2)

"*The confessors of religious women, ordinary as well as extraordinary — should in no way interfere with the internal or external government of the community.*" (§ 3)

"*The confessors both ordinary and extraordinary for houses of religious women, who are immediately subject to the Apostolic See or to the local Ordinary, are appointed by that local Ordinary; for houses subject to a regular superior they are presented by the latter to the local Ordinary to whom it belongs to give them the approval to hear the confessions of nuns, and to supply, if necessary, the negligence of the regular superior.*" (Can. 525)

"*The term of office for the ordinary confessor of religious women is not to exceed three years; the Ordinary, however, can reappoint him for a second and even a third term, when other provision cannot be made because of the dearth of priests suitable for the office, or when the majority of the religious (including those who in other matters have no right to vote) agree on the reappointment of the same confessor by a secret vote; however, for the religious who are opposed to this reappointment other provision must be made if they so desire.*" (Can. 526)

"*According to the terms of* Canon 880, *the local Ordinary can for a serious reason re-*

move both the ordinary and extraordinary confessor of religious women, even though the monastery be subject to regulars and the confessor himself be a regular; moreover he is not bound to make known the reason for the removal to anyone except to the Apostolic See, on its request; however, if the nuns are subject to regulars, he must inform the regular superior of the removal." (Can. 527)

"*Ordinary and extraordinary confessors shall also be assigned for lay institutes of men, according to the terms of* Canon 874, § 1 *and* Canon 875, § 2; *should any such religious petition for a special confessor, the superior is to grant the petition, and he is positively forbidden to make any inquiry into the reason for this request or to show the least sign of displeasure at it.*" (Can. 528)

1. Confessors in Clerical Institutes

(a) *Confessors appointed for the community*
(b) *Other confessors*

(a) *Confessors appointed for the community*

107. For every house there must be appointed more than one confessor in order

that the religious may enjoy freedom of choice and may at any time find more easily someone ready to hear them. Hence the number of confessors to be appointed in each house must be proportionate to the number of members in the community. As the law does not determine what this proportion has to be, it is left to the judgment of superiors to decide. (*Can.* 518, § 1)

108. In the case of communities which are exempt, these several confessors must be appointed with power to absolve from cases which may happen to be reserved in the institute, whether they be reserved to the local or to a higher superior. (*Can.* 518, § 1)

109. Superiors who have faculties to hear the confessions of their subjects, by virtue of their office if they are exempt, or by virtue of episcopal delegation if they are not exempt, may validly exercise their faculty, but they are allowed to make use of it only when subjects apply to them entirely of their own accord. Then, of course, they must fulfil the general enactments of the law in this matter. Moreover, even if some

go to them entirely of their free will, they must not hear the confession of the same subjects habitually without some grave reason. (*Can.* 518, § 2) In any case they must always take care not to interfere with the freedom of their subjects and it would be interference on their part if they would endeavor by force, fear, importunate recommendations or other like means to induce their subjects to confess their sins to them. (*Can.* 518, § 3)

(b) *Other confessors*

110. The appointment of a certain number of confessors for each house need not be understood in the sense that religious can never go to other confessors. Notwithstanding the fact that the constitutions of an institute command or advise religious to go at stated times to the regular confessors of the house, everyone, even though he may be a member of an exempt institute, may go to confession to any other priest who has the ordinary faculties from the Bishop and be absolved by him also from sins which happen to be reserved in his

institute. He may do so whenever he thinks that this change is necessary or useful for the greater peace of his soul, as for instance when he needs special advice and he has greater confidence in someone else to whom he can open his conscience more freely, or, in some extraordinary case, when he is afraid that his weakness might interfere with the integrity of his confession if he would go to one of the ordinary confessors of the house. In these and similar cases religious do not need a special permission from their superior, whether they go to another confessor who is visiting their house, or they go to him while they are out walking or on business. (*Can.* 519)

In accordance with *Can.* 519 we say that everyone enjoys this freedom whenever he thinks that the change is necessary or useful for *the peace of his soul.* If this reason does not exist, the constitutions which command or advise subjects to go to one of the regular confessors of the house must be observed. This is what the law means when in this canon it declares that this freedom is given *without prejudice* to the

constitutions. If one therefore would act otherwise and without sufficient reason would go to confession to a priest who is not one of the regular confessors of the house, he would violate the rule. The absolution, however, apart from other circumstances, would be valid.

As to superiors, they must allow their subjects perfect freedom in this matter and should not give any sign of displeasure when their subjects make use of this faculty granted them by the law.

2. Confessors in Institutes of Women

(a) *Various classes of confessors*
(b) *Qualities*
(c) *Appointment*
(d) *Term of office*
(e) *Removal*

(a) *Various classes of confessors*

a. Ordinary and special confessors
b. Extraordinary confessors
c. Other confessors

The confessors to whom sisters and nuns may go can be divided into three classes:

(*a*) *ordinary* and *special* confessors, who are appointed to hear the confessions of the community or of individuals *habitually;* (*b*) *extraordinary* confessors, appointed to hear the confessions of the community or of individuals *at intervals* or *in particular cases;* (*c*) confessors, other than those mentioned under (*a*) and (*b*), available to sisters and nuns under certain conditions. We shall treat of these three classes separately.

a. Ordinary and special confessors

111. Each community must be supplied with an *ordinary* confessor. More than one confessor should not be appointed for the same community except in cases of too large communities or when there is some special reason for having more than one. There would be, for instance, a special reason when several members are foreigners and are not yet very familiar with the language of the country. (*Can.* 520, § 1)

112. Besides the ordinary confessor of the community, the Code speaks of a *special* confessor or *spiritual director*, whom a religious may wish to have for the peace of

her soul or with a view of making greater progress in Christian perfection. When this request is made, the Ordinary should grant it without difficulty. Judging from the wording and the context of the law, this special confessor and spiritual director is one to whom a sister or nun may go *ordinarily*, and not only once with the obligation of applying to the Bishop whenever she needs him. On the other hand this is a *special* concession and religious are not supposed to ask for it lightly and without consideration, but only in cases in which the motives specified in the law really exist. Accordingly the Bishop has to see that no abuses arise from this concession and if they arise, he has to eliminate them, though without prejudice to the liberty of conscience of the petitioner. This last clause should not be understood to mean that the Bishop may never refuse a religious the permission to have a special confessor. This refusal may sometimes be necessary in order to do away with abuses. The meaning of the clause seems to be that *as far as possible* the Bishop should endeavor to eliminate

abuses without interfering with the liberty of conscience of religious and that he should not have recourse to this remedy except in cases when the abuses are certain and they cannot be removed in any other way. (*Can.* 520, § 2)

b. Extraordinary confessors

113. Besides the ordinary confessor, every community must be supplied with an *extraordinary* confessor. This extraordinary must go to the house for which he has been appointed at least four times a year. The law says that he should go *at least* four times a year; in some cases there may be reasons for which he may be asked to go oftener.

When the extraordinary comes, all the members of the community must present themselves to him at least to receive his blessing. The reason why all must present themselves to him is in order that no reflection be cast on those who would go of their own accord; but to safeguard freedom of conscience, the law does not oblige anyone to receive from him the sacramental absolution. (*Can.* 521, § 1)

114. Always having in view the spiritual advantage to be derived by religious from enjoying as much freedom of choice in the matter of confessors as is compatible with the necessary uniformity of training among the members of the same community, the law is not satisfied with requiring the appointment of the extraordinary confessors just mentioned. It further directs Bishops to approve for each community a certain number of confessors to whom anyone may easily go at any time she wishes. Once these confessors have been duly appointed, there is no need of applying to the Bishop for faculties every time they are needed. While every community must be provided with some such extraordinary confessors, it is clear that the same confessors may serve in this capacity for the benefit of several communities. (*Can.* 521, § 2)

115. Lest at times, for some apparently good motive, superiors might think they were obliged to restrict the use of this privilege, the law in very strong terms forbids all interference on the part of superiors in this matter. Superiors are forbidden

to inquire for what reason a religious makes her request; and they cannot do this even through others or *indirectly*, for instance, by putting questions like these: Are you not satisfied with the ordinary confessor of the house? Is it not better to follow common life? They are forbidden to *refuse* either by *word* or *deed* to grant the request, that is, either by answering that they cannot comply with it or by ignoring it altogether. Finally they are forbidden to give any sign of displeasure. (*Can.* 521, § 3) It is hardly necessary to remark that these warnings as well as those contained in the following canons cast no reflection on the manner of governing on the part of superiors. Their object is solely to make known to them the spirit of the Church in this matter. Superiors are always anxious to carry out the will of the Church and once they are informed in regard to it, there is no danger that they will not carry it into effect to the letter.

c. Other confessors

116. The confessors belonging to one or the other of the various classes which we

have mentioned so far have this in common, that they must have received from the Ordinary of the place a special approbation to hear the confessions of *religious women*. However, these may at times go to other confessors who have no special faculties for religious women but have only the ordinary faculties of the diocese, provided their faculties have not been restricted to hear the confession of *men*. This restriction is customary in some European countries, where priests may not hear women before they have reached a certain age. This faculty however to go to any approved confessor of women is granted to sisters and nuns only under certain circumstances and within certain limits as follows.

117. First they can go to any such confessor whenever this is useful for the tranquillity of their conscience; but in this case the confession must be heard in a church or in an oratory, whether this be *public* or *semipublic*. A *public oratory*, as distinguished from a *church*, is a place destined to divine worship, chiefly for the

sake of a community or even of private persons, but in such a way that all the faithful have a legitimately approved right to frequent it, at least while divine services are held therein. (*Can.* 1188) In so far as the place is destined *chiefly* for the use of *a community* or *of private* persons, it is an *oratory* or chapel and *not a church.* In so far as its doors are open to *all the faithful,* it is a *public* and *not a semipublic or private* oratory. A *semipublic* oratory is a place of worship destined for the use of a *community* or of a certain class of people, *without being open to the public,* although a few outsiders, like visitors and friends, are admitted. Such semipublic oratories are found in all religious communities both of men and women, as well as in hospitals, asylums and similar institutions. This privilege therefore of going to confession to any priest approved for women is limited in its use to churches and public as well as semipublic oratories. This is the only restriction put down by the law. The present legislation does not seem to require that in order to enjoy this privilege nuns and

sisters should go out of their house as was required by the preceding legislation contained in a decree of the S. Congregation of Religious, February 3d, 1913. This decree enacted that: "when nuns and sisters are outside their own house . . . they may confess in any church or oratory even semipublic, to any confessor approved for both sexes." The words "when nuns and sisters are outside their own house" which in this decree put a special limitation to the faculty of going to confession to any confessor approved for women, have not been repeated in this *Canon* 522. Taking therefore the law as it reads now, all that is required is that the confession be made to a confessor approved for women, in a church or in an oratory (public or semipublic) whether these sacred places are outside their house or within the limits of their religious establishment. Nor does any serious difficulty arise from *Can.* 876, § 1, where it is stated that under penalty of invalidity priests cannot hear the confessions of religious women without special faculties, because immediately after this statement the

law makes two exceptions and one of them is the one contained in this canon.

118. The concession of this faculty is so broad that it is given *revocato quolibet contrario privilegio.* That is, if some religious institute had obtained from the Holy See the privilege that its members could never go to confession to priests not having special faculties for them, that privilege, in so far as is contrary to this canon, is revoked.

119. Moreover concerning the use of this faculty, superiors cannot forbid it, not inquire about it, even indirectly, and the religious themselves are not obliged to mention anything about it to their superiors. This is expressly declared in the law. (*Can.* 522) However the meaning of the law is that religious are not obliged to mention to their superiors *the fact that they intend to go to confession* to a priest who is not specially appointed for them; but the law does not free religious from the obligation of asking superiors for the permission which at times may be necessary in order to reach the desired confessor, for instance when they have to leave the house.

120. The second case in which sisters and nuns may go to any priest approved to hear the confessions of women is in time of a *serious* illness. The law does not define how grave the illness must be; but only declares that it need not be so grave as to entail the danger of death. Any disease therefore which in the common estimation of people is looked upon as serious comes within the scope of the law. Such are those diseases or disturbances which require a major operation or only a minor operation which may leave the whole system in an abnormal state for weeks. Again those diseases are included which are not dangerous in their first stage but may at a later period become dangerous. When religious are seriously ill, and *as long as* they are seriously ill, they can call any confessor approved for women, even though not approved for *religious* women. They can go repeatedly to the same priest, or, if they so wish, to different ones. It may be asked whether this freedom extends to the time when a disease has lost its serious character, namely to the period of

convalescence. We are inclined to think that it does. The serious illness has not ceased altogether and a person convalescent from a grave illness is still in a condition which requires perfect tranquillity of mind and soul. Finally superiors cannot forbid their subjects from using this privilege. But can they refuse to call a priest as desired by a sick sister or nun, if they believe that it is not the case contemplated by the law? We are of the opinion that unless it is evident that it is not the case of a serious disease, the sick person should be given the benefit of the doubt. (*Can.* 523)

(b) *Qualities*

121. In general both the ordinary and the extraordinary confessors of religious women may be chosen among the secular priests or among religious; but in the latter case the permission of the superior is necessary, although not for the validity of the appointment. All must be known to excel in virtue and prudence. They must also have completed their fortieth year of age, unless in the judgment of the Ordinary there is

sufficient reason for being satisfied with a less mature age. A sufficient reason may be the scarcity of priests of that age, available for this office. In any case, confessors must limit themselves to directing their penitents in matters of conscience. They have no power over them in those matters which affect their external relations to the community and their superiors. Confessors may indeed give advice to their penitents as to how they must act in their dealings with the community; at times they may have to declare what their obligations are; but their advice or declaration will have no value in the external management of the community. Thus, for instance, a confessor may tell a sister that she had better ask for a change of office or of residence; but merely on the strength of this direction neither the sister has right to the change nor is the superior bound to grant it. (*Can.* 524, § 1)

122. In order that one who has been the ordinary confessor of a community may be appointed extraordinary, one year must have elapsed since his term as ordinary

has expired; nor can he be reappointed as ordinary for the same community before that time, except in the cases mentioned in one of the following canons. (*Can.* 526) But one who has been extraordinary may be appointed as ordinary immediately. (*Can.* 524, § 2)

123. After having laid down what the qualifications of confessors of religious women must be, the law warns such confessors against meddling in any way in the internal or external government of the community. (*Can.* 524, § 3) This warning is much like the declaration made by the law in section 1 of this canon, where it is said that confessors have no power over religious in their external relations to community and superiors. There is, however, some difference between these two laws. Section 1 refers more directly to the dealing of confessors with their *penitents*, as has been explained above; this section 3 refers rather to the dealing of confessors with the *superiors* of the community. The former contains a declaration of the power which confessors have over their penitents; the latter contains

a prohibition to interfere with the action of superiors, whether religious or ecclesiastical. However, this prohibition should not be understood so strictly as never to allow confessors to represent to superiors what in their judgment would be more conducive to the spiritual advantage of this or that individual. There may be cases in which, with permission of their penitents, they may make to the religious or to the ecclesiastical superiors some suggestion, without really interfering with their government; but this ought to be done rarely, only in cases of true necessity, and always with prudence and moderation.

(c) *Appointment*

124. Apart from the cases mentioned in *Canons* 522 and 523, and explained here, ¶¶ 117–120, in order that priests may validly and licitly hear the confessions of sisters and nuns, whether professed or novices, they must have been approved expressly for religious women; the general approval to hear confessions in a diocese is not sufficient. (*Can.* 876) Consequently,

the four classes of confessors referred to in ¶¶ 111–114 need a special approbation from the Ordinary of the diocese. This is true also when there is question of the confessors of communities which are subject to the superiors of some order of men; but in this case the regular superior has the right to propose to the Bishop the names of the ordinary and the extraordinary confessors and the Bishop can refuse to approve them if they lack the necessary qualifications. Should, however, a regular superior fail to propose the names in due time, the Bishop may act directly. (*Can.* 525)

(d) *Term of office*

125. The Code does not define anything concerning the duration in office in the case of extraordinary confessors. In regard to these, therefore, there is no obligation to appoint them for a definite period of time or to change them if in appointing them the Ordinary had assigned a term.

126. As to the ordinary confessor, he cannot be appointed for a term exceeding three years. When the first term has ex-

pired, the general rule is, that he cannot be reappointed as ordinary until a year after the expiration of his first term has elapsed. (See above *Can.* 524, ¶ 122) We say that this is the general rule, because there are two cases in which he may be reappointed immediately for a second or even for a third term. (*Can.* 526)

127. The first is when, owing to the scarcity of priests endowed with the necessary qualifications, the Bishop cannot replace him with another ordinary confessor. The second is when the larger number of religious belonging to the community agree by secret ballot on having the former confessor reappointed. All the members of the community have right to give their vote, even those who have no voice in other affairs. (*Can.* 526)

Concerning both these exceptions it may be asked whether an ordinary confessor may under those circumstances be confirmed for a fourth term. From the wording of the law it would seem that he cannot, because the *general rule* is that he can serve only for three years, and the *exceptions*

are allowed only for a second and a third term.

Concerning the second of these exceptions, it is clear that the right to vote in this case is enjoyed by all the sisters who have taken their vows, whether perpetual or temporary, whether they are choir sisters or lay sisters; and it would seem that novices also are included.

128. The last clause of *Can.* 526 shows once more how anxious the Church is to allow sisters and nuns all possible freedom in this matter of confession. While the law grants to the majority of the members of the community the favor to have the ordinary confirmed for another term, it ordains that for those who disagree with the majority, special provision should be made if they so desire. The law may easily be complied with by appointing a second ordinary confessor besides the one who has been confirmed. A provision like this is in keeping with *Can.* 520, § 1, which permits that for a just reason the same community may have several ordinary confessors.

(e) *Removal*

129. Even before the term for which an ordinary or extraordinary confessor was appointed has expired, the Bishop can remove him from his office. This holds also in the case of a confessor belonging to an order of regulars. The law says explicitly that the Bishop must have some grave reason for so acting, but it adds that he is not bound to give his reasons except to the Apostolic See, in case the latter asks for them. From this last clause it is clear that if any of the interested parties judge that the removal was effected without sufficient reason, they may have recourse to the Holy See. In this case the Holy See would inquire from the Bishop what the reasons for the removal were. However this recourse must be well founded, otherwise the Apostolic See will reject it without giving it any consideration. Ordinarily there will be no room for such recourses, as Bishops do not take steps like this rashly and without some reason sufficient to justify their action.

Bishops may effect these removals also

when there is question of confessors of nuns who are subject to regulars by whom they had been chosen (*Can.* 525), but in this case, the regular superior has to be notified in order that he may present other names for episcopal approval. (*Can.* 527)

3. Confessors in Lay Institutes of Men

130. The law, as is laid down in *Can.* 528, requires first that in lay institutes of men also, be appointed the ordinary and extraordinary confessors in accordance with *Can.* 874, § 1 and 875, § 2. From the first of these two canons it is clear that it is always the Bishop who grants jurisdiction to these confessors. From the second it is also clear that in the case of exempt institutes, the superior has the right to propose to the Bishop their names although the jurisdiction must come from the Bishop. (*Can.* 528)

131. Moreover, with regard also to lay institutes of men, the law provides that in case a religious wishes to have a special confessor, he should not be refused and the superior is forbidden to ask in any way

(namely either directly or indirectly) the reason of his request or to show that he is not well pleased with it. (*Can.* 528)

132. Finally, like the members of clerical institutes, the members of lay institutes of men may have recourse, for the peace of their conscience, to any confessor who has the ordinary faculties of the diocese. (See above, *Can.* 519, ¶ 110) The tenor of *Can.* 566, § 2, in which there is question of confessors of novices, points to this same conclusion.

II. CHAPLAINS

CANON 529

"*In the case of non-exempt lay institutes, the local Ordinary is to designate the chaplains and approve the preachers; but in the case of exempt institutes, the regular superior designates them and on his failure to do so, the Ordinary will provide.*"

133. After having laid down the rules concerning the confessors of religious communities, the law deals with the appointment of chaplains in lay institutes in *Can.* 529. Clerical institutes are not mentioned because in their case the duties of chaplain are performed by the members of the community itself. The office of chaplain is to assist the community by saying mass, distributing Holy Communion, and giving benediction with the Blessed Sacrament according to the general laws of the Church and the statutes of the diocese. The chaplain, as such, has not the faculty to give Holy Viaticum and administer extreme

unction, unless the community has been exempted by the Bishop from parochial jurisdiction or he has been delegated by him to whom the law reserves this right. (See above, ¶¶ 96, 97. *Can.* 514)

III. MANIFESTATION OF CONSCIENCE

CANON 530

"*All religious superiors are strictly forbidden to induce their subjects, in any way whatever, to make a manifestation of conscience to them.*" (Can. 530, § 1)

"*Subjects, however, are not prohibited from opening their minds freely and spontaneously to their superiors; but rather it is desirable that they should go to them with filial confidence and lay open before them whatever may be a source of doubt and solicitude if their superiors are priests.*" (§ 2)

134. Among the means to be employed for making progress in Christian perfection a very important one is the manifestation of one's conscience. To manifest one's *conscience* to a spiritual director means to make known to him the *interior movements of one's soul*, both those which are indeliberate, like temptations, dangers, repugnances, desolations, consolations, aridity of soul, fervor

in prayer, and those which imply a deliberate act, like desire of perfection, conquest of self, correspondence to grace and other similar acts of virtue as well the faults contrary to them. *Canon* 530 deals with this manifestation of conscience in two sections.

135. In the first section it strictly forbids all superiors to induce their subjects in any way to make it to them. The reason of this prohibition is because it is not advisable to force subjects to reveal the *interior of their soul* to those who by virtue of their office have to govern them in their *external* relations to the community. (*a*) *All* religious *superiors* are forbidden; whether higher or lower; whether they govern a lay or a clerical institute. (*b*) They are forbidden to induce their *subjects*, whether *professed* or *novices*. (*c*) To make to them the manifestation of *conscience*, namely to open to them the *interior of their soul* as described above, and *not* to acknowledge what is *external* and may be known by others, like breaches of silence, neglect of study, external faults in the discharge of one's office. Nor

are superiors forbidden to inquire about what is internal, but does not belong to the domain of conscience, as for instance if a superioress would ask a sister if she knows how to make her meditation or her particular examen, provided she does not ask whether she makes sufficient effort to pray well or whether she takes care to choose a suitable subject in the matter of the particular examen. (*d*) They are forbidden to *induce* their subjects *in any way*, that is, to use any moral influence tending directly or indirectly to elicit this manifestation. Superiors will act against this prohibition by commanding their subjects, or merely requesting them, to make their manifestation; by reprehending those who do not follow this practice or praising those who do follow it. But they are not forbidden to speak in general terms of the usefulness of this exercise in their conferences to the whole community provided they do not blame in any way those who abstain from it. (*e*) Finally, they are *strictly* forbidden to induce their subjects to follow this practice. Hence superiors who would act

against this prohibition would commit a mortal sin, unless the influence would be slight in manner or matter. In this case the sin would be venial, as for instance if in individual cases, and not habitually, they would inquire about some conscience matter of lesser importance which a religious has no natural repugnance to reveal. (*Can.* 530, § 1)

136. Lest from the prohibition contained in the first section of this canon, religious subjects would infer that the law is altogether opposed to the manifesting their conscience to their superiors, the second section makes it clear that this is in no way the meaning of the law. The only purpose of the law is to leave subjects entirely free in this matter. Superiors are not allowed to induce their subjects to make to them the manifestation of their conscience, but (*a*) subjects are not forbidden to do this freely and spontaneously. In fact the law goes one step further and declares that (*b*) it is even desirable that subjects should freely approach them with filial confidence and ask for advice in their doubts and

anxieties if their superiors are priests. This declaration is fully in keeping with what we said above concerning the usefulness of opening one's conscience to an experienced director.

CHAPTER III

TEMPORAL GOODS AND THEIR ADMINISTRATION

I. RIGHT TO ACQUIRE AND POSSESS PROPERTY

II. RIGHT TO ADMINISTER PROPERTY

III. OBLIGATIONS OF ADMINISTRATORS

1. In Making Investments
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3. Concerning the Account of the Administration

IV. RESPONSIBILITY IN CONTRACTING DEBTS AND OBLIGATIONS

1. Responsibility of Religious
2. Responsibility of Other Persons
3. Precautions in Assuming the Responsibility

V. FACULTY TO MAKE GIFTS

I. RIGHT TO ACQUIRE AND POSSESS PROPERTY

CANON 531

"Not only the institute, but also provinces and houses are capable of acquiring and possessing property with fixed or founded revenues, provided the capacity so to act be not forbidden or restricted by the rules and constitutions of the institute." (Can. 531)

137. *Canon* 531 declares that in religious institutes, not only the institute itself, but also the provinces into which the institute is divided as well as the houses which belong to a province, are capable of acquiring and possessing property. This declaration is an application of the principle laid down in *Can.* 1495, § 2, that this right is enjoyed by every moral entity which has been invested by the ecclesiastical authority with juridical personality. This is the case not only with regard to religious institutes but also with regard to their provinces and houses. In accordance with the same *Can.*

531, this right extends also to the income in any way coming from their property. Religious communities, therefore, not only may acquire and possess, day after day, what is necessary for their daily support, but they may acquire and own property *in a permanent manner* with the right to draw the income accruing from it.

While admitting this capacity in religious institutes, the canon recognizes the exceptions which take place in those institutes in which the right to own property is excluded or limited by their rules or constitutions.

II. RIGHT TO ADMINISTER PROPERTY

CANON 532

"*The property of the institute as well as that of the provinces and houses is to be administered conformably to the constitutions.*" (Can. 532, § 1)

"*Besides superiors, those officials who are so empowered by the constitutions, while not exceeding the limits of their office, can validly incur expenses and perform the juridical acts of ordinary legislation.*" (§ 2)

138. Section 1 of *Canon* 531 supposes that the constitutions of an institute embody certain rules concerning the manner in which its property must be administered and it urges that they should be observed. These rules may have reference to the precautions to be taken for the safekeeping of valuables; the amount of money which superiors are allowed to dispose of; to whom and how often treasurers must give an account of their administration; what quota of the

surplus of their income, houses and provinces must give respectively to the province or to the institute for common expenses.

Section 2 declares that besides superiors, also other officials, like treasurers, may validly perform the acts which belong to the ordinary administration of the property.

III. OBLIGATIONS OF THE ADMINISTRATORS

1. **In Making Investments**
2. **In Alienating Property**
3. **Concerning the Account of the Administration**

CANONS 533–535

"*In the investment of money the law as expressed in* Canon 532, § 1 *shall be observed; but the following persons are obliged to obtain the previous consent of the local Ordinary:*

1° *The superioress of nuns and of diocesan institutes, for any investment of money; further, if the monastery of nuns be subject to a regular superior, his consent is also required;*

2° *The superioress of a pontifical congregation, if the money to be invested constitutes the dowry of professed religious, according to* Canon 549;

3° *The superior or superioress of each house of a religious congregation, should the money to be invested consist of donations or bequests made to the house for local expenditure on divine worship or works of charity;*

4° *Any religious even though a member of an order of regulars, if the money was donated to the parish or mission, or given to the religious for the benefit of the parish or mission.*" (Can. 533, § 1)

"*These regulations have the same binding force in any case of a change of investment.* (§ 2)

"*Without prejudice to the ruling contained in* Canon 1531, *when there is question of the disposal of precious objects, or of property exceeding in value thirty thousand francs, or of contracting debts and obligations in excess of this stated amount, the contract is null and void unless the previous authorization of the Holy See be obtained: in cases where the sum of thirty thousand francs is not exceeded, the written permission of the superior is necessary and sufficient if given in accordance with the constitutions and with the consent of his chapter or council expressed by secret vote; if there is question of nuns or diocesan sisters it is also necessary to obtain the written approval of the local Ordinary and of the regular superior, should the monastery of nuns be subject to regulars.*" (Can. 534, § 1)

Debts and obligations by which the corporate entity, whether institute, province or house, is still burdened must be stated in the petition for permission to contract debts or obligations. If this ruling is not observed the permission obtained is null and void." (§ 2)

"For all monasteries of nuns, even though exempt:

1° *The superioress must render an account of her administration to the Ordinary of the place once every year, and even more often if it be so prescribed in the constitutions; and if the monastery be subject to regulars the account should be given to the regular superior also. Nothing can be charged when asking for this account."*

2° *If the account of the administration is not satisfactory, the Ordinary is empowered to apply suitable remedies, also removing, if need be, the treasurer and other administrators; but if the monastery be subject to the regular superior, the Ordinary has to advise him to provide, and if he should neglect doing so, the Ordinary himself must provide."* (Can. 535, § 1)

"In other religious institutions of women,

the account of the management of property representing dowries shall be given to the Ordinary of the place during his visitation and more frequently, if he sees fit. (§ 2)

"*The Ordinary of the place has moreover the right of inquiry concerning*

1° *The economic status of every diocesan religious house;*

2° *The management of funds and bequests treated in* Canon 533, § 7, nn. 3, 4. (§ 3)

While religious institutes may *own* a certain amount of property, it may also happen that they hold property *in trust.* This is the case with property given by the faithful for promoting works of charity or divine worship. Moreover, although religious institutes are the true owners of what they do not hold in trust, they are subject to the Church in administering what they possess. For, as moral bodies, they are *ecclesiastical* persons, and consequently the property owned by them assumes the character of *ecclesiastical* property. By reason both of this relation of religious institutes to the Church and of the character of the

property owned by them, the Church had the right to make laws tending to govern the action of religious administrators, with the purpose of protecting the property in their possession. These laws are to be found in the following three *Canons*, 533, 534 *and* 535, and can be classed under the three headings already given under the general heading of this point.

1. Obligations of Administrators in Making Investments

139. For making investments of any kind, like lending money, buying government bonds, acquiring shares or bonds issued by industrial or commercial societies, as well as for changing the investment already made, besides the formalities which the constitutions may prescribe, according to *Can.* 532, it is necessary to obtain the consent of the Ordinary of the place, when there is question of religious mentioned in the following paragraphs. It is evident that what is prescribed here for religious superiors holds also for treasurers and procurators who act in their name. (*Can.*

533, § 1) Those who are bound to obtain the consent of the Ordinary are:

(*a*) The *superioress* of a diocesan institute or of a monastery of nuns, and if the monastery of nuns is subject to regulars, the superioress must obtain also the consent of the regular superior. (*Can.* 533, § 1, n. 1) The *superior* of diocesan congregations is not mentioned here.

(*b*) The superioress of a pontifical congregation, if the money constitutes a dowry. (*Can.* 533, § 1, n. 2)

(*c*) The *superioress* or the *superior* of a house belonging to a congregation, whether this be diocesan or pontifical, where there is question of funds given to the house for promoting divine worship or some work of charity to be attended to *in the same place.* This last clause seems to limit the necessity of the consent of the Ordinary to cases in which, according to the mind of the donors, the work of charity has its seat, as it were, in the same house, such as is the case of the money given for a hospital or an asylum. Accordingly this consent does not seem to be required in other cases. For instance,

if money is given to a provincial to be used at her discretion for the poor, or for the sick, in general, without applying it to any charitable institution in particular. (*Can.* 533, § 1, n. 3)

(*d*) Every religious, even though he be a member of an order of regulars, when there is question of money which has been given by the people to the parish or mission of which he is the pastor or superior; and also of money handed over to the members of a religious community with the intention to supply the needs of the parish or mission. (*Can.* 533, § 1, n. 4)

2. In Alienating Property

(a) *Acts for which the law requires certain formalities*

(b) *When the consent of the Holy See is necessary*

(c) *When the consent of the religious superior is sufficient*

(d) *When the consent of the Ordinary is required*

(e) *Essentials of the petition for the necessary consent*

(a) *Acts for which the law requires certain formalities*

140. *Canon* 534 prescribes certain formalities to be observed by administrators in alienating ecclesiastical property. These formalities are chiefly the consent of the Apostolic See, or of the religious superior or of the Ordinary, according to the value of the property alienated and the degree of dependence of the religious institute on the Ordinary of the place. In the following paragraphs it will be explained when one or the other of these formalities is to be fulfilled. With regard to the *acts* for which the law requires them, they are: *alienation* properly so called; contracts by which *debts* are incurred and the taking up *obligations* owing to which the ownership of the property incurs the danger of being alienated in the future as is the case of mortgages, and going surety for others. (*Can.* 534, § 1)

(b) *When the consent of the Apostolic See is necessary*

141. The consent of the Apostolic See is necessary for alienating *precious* objects or property valued at more than 30,000 francs or lire as well for incurring *debts* and contracting *obligations* for a sum exceeding the same amount.[1] (*Can.* 534, § 1)

(c) *When the consent of the religious superior is sufficient*

142. In other cases not contemplated in the preceding number all that ordinarily is required is the written permission of the religious superior. The Code leaves to

[1] By virtue of a decree of the Sacred Congregation of Religious, dated July 30, 1909, religious institutes needed the permission of the Holy See for contracting debts in excess of 10,000 francs (about $2000). In a letter dated October 11, 1910, the Apostolic Delegate authorized, for a period of ten years, the Ordinaries of the dioceses of the United States, to permit the religious communities of their respective dioceses to contract debts up to the sum of 50,000 francs (about $10,000) without having recourse to the Holy See. (*Ecclesiastical Review*, LIII, 594.) The present law, embodied in *Can.* 534, is less stringent than that contained in the decree of 1909, but does not give religious superiors as much freedom as the indult of 1910. It seems, therefore, that the aforesaid indult may still be used.

the constitutions to determine which is the superior from whom this permission must be obtained. As a rule for small sums the permission of the local superior is sufficient; for large sums the permission of the provincial or of the general is required. The superior, however, cannot give this permission without the consent of his chapter or council. As the Code does not determine which of these two bodies has to be consulted by the superior, the consent of the latter will be sufficient, unless for some cases the constitutions require the intervention of the former. (*Can.* 534, § 1)

(d) *When the consent of the ordinary is required*

143. In the cases contemplated in the preceding paragraph, when there is question of diocesan institutes or of monasteries of nuns, besides the permission of the religious superior, it is necessary to obtain also the consent of the Ordinary; and when there is question of nuns who are subject to a regular superior, also the consent of the latter is required. (*Can.* 534, § 1)

(e) *Essentials of the petition for the necessary consent*

144. In asking the necessary consent for contracting debts or obligations explicit mention must be made of former debts or obligations from which the institute, the province or the house, respectively, have not yet freed themselves. If this is not done, the permission is null and void. It is clear that in case the debt or obligation has been reduced, it is not necessary to mention the original sum; but it will be sufficient to mention the amount still due. (*Can.* 534, § 2)

3. Concerning the Account of the Administration

A comparison between *Can.* 535 and *Can.* 533, will show that the communities which by virtue of the former are bound to give to the Ordinary an account of their administration are (perhaps with one exception) the same which by virtue of the latter must have recourse to him for making certain investments. The various cases, however, which are dealt with in these two canons are not treated in both in the same order.

145. In the first section this *Can.* 535 lays down the rule, that this account of the administration must be given by the superioress of every monastery of nuns, even though exempt. It must be given once a year, or oftener if the constitutions so prescribe. In calling for it, no tax or similar contribution may be asked. In the case of nuns subject to regulars, it must be given also to the superior of the latter. (*Can.* 535, § 1, n. 1) If the manner of conducting the administration is not satisfactory, the Ordinary is empowered by the law to take such measures as his prudence will suggest, even by removing the treasurer and the other administrators; but if the monastery is subject to regulars, the Ordinary must first warn the superior of the latter to provide and in the case of neglect on the part of this superior, he has to provide himself. (*Can.* 535, § 1, n. 2)

146. The second section deals with the religious congregations of women, and without distinguishing between pontifical and diocesan, it obliges them all to give to the Ordinary an account of the administration

of the property which constitutes the dowry of the sisters. This account must be given at the time of the episcopal visitation or oftener, if the Ordinary deems it necessary. (*Can.* 535, § 2)

147. The third section mentions first diocesan congregations and without distinguishing between men and women it enacts that all must give this account to the Ordinary. Evidently this account must embrace all the property held by them, as no limitation is made as it is made in the preceding section in which pontifical congregations are included. (*Can.* 535, § 3, n. 1) Again in this third section reference is made to the funds and legacies referred to in *Can.* 533, § 1, nn. 3, 4 and it is ordained that the administrators of such property must likewise give an account to the Ordinary. (*Can.* 535, § 3, n. 2)

Summing up the contents of this *Canon* 535, the account of the administration must be given:

(*a*) By monasteries of nuns and by houses of diocesan congregations *without limitation to a certain source of revenue.* (*Can.* 535, § 1,

and § 3, n. 1. Compare with *Can.* 533, § 1, where diocesan congregations of men are not included)

(*b*) By nuns and all religious congregations of women whether diocesan or pontifical, concerning the property in which dowries have been invested. (*Can.* 535, §§ 1 and 2. Compare with *Can.* 533, § 1, nn. 1 and 2)

(*c*) By nuns and houses of religious congregations, whether of men or women, concerning funds supplied for promoting divine worship or charitable works to be attended to in the same place; as well as by religious, even though belonging to an order of regulars, concerning money given to the parish or the mission, or given to the religious for the sake of one or the other. (*Can.* 535, §1, and §3, n. 2. Compare with *Can.* 533, § 1, nn. 1, 3 and 4)

IV. RESPONSIBILITY IN CONTRACTING DEBTS AND OBLIGATIONS

1. **Responsibility of Religious**
2. **Responsibility of Other Persons**
3. **Precautions in Assuming the Responsibility**

CANON 536

"*If a corporate entity (religious institute, province or house) contracts debts or obligations, even with the consent of superiors, it is personally responsible for the same.*" (Can. 536, § 1)

"*If a regular contracts debts, with the permission of superiors, the corporate entity whose superior granted the permission is held responsible; in the case of a religious with simple vows, he himself is held responsible, unless he acted with the consent of the superior on behalf of the corporation.*" (§ 2)

"*If a religious contracts debts or obligations without any permission of superiors, he himself is held responsible, not the religious institute, province or house.*" (§ 3)

"*Let it always be understood that action*

can be brought against the individual who has personally profited by the contract." (§ 4)

"*Religious superiors should see to it that debts are not contracted, unless it is certain that interest upon the same can be paid from the usual revenues and the capital cleared by a legitimate sinking fund within a reasonable time.*" (§ 5)

1. Responsibility of Religious

148. As to debts and obligations contracted by religious, *Can.* 536 takes into consideration three different cases: (*a*) the contract was entered by religious *as forming a moral body*, whether this body be the institute itself or a province or a local community; (*b*) the contract was made by a religious *as an individual*, but with the permission of his superior; (*c*) the contract was entered into by a religious as an individual, without his superior's permission.

In the first case the moral body which contracted the debt or obligation is responsible, even if it acted with the superior's permission. (*Can.* 536, § 1)

In the second case a distinction has to be

made, whether the religious has *solemn* or *simple* vows; if the religious has solemn vows, the responsibility rests with the moral body whose superior gave the permission; if he has simple vows, as a rule the responsibility rests with the religious himself. The difference between these two instances is that in the first the individual is a person incapable of owning property and consequently he cannot assume responsibilities which presuppose that capacity; in the second, the individual is capable of owning property and consequently is capable of assuming corresponding obligations. As the different status of these two religious is known to the superior, when he gives permission to a religious of solemn vows, who cannot own anything, he is supposed to take the responsibility, himself, as superior of the community of which the solemnly professed religious is a member. But when he gives permission to a religious of simple vows who is not incapable of owning property, he is supposed to lend his consent only in order that the individual may act lawfully without taking upon himself or the

community a responsibility of which the individual is capable himself. We said that in the case of a religious of simple vows, the responsibility rests with him, *as a rule*, because an exception is made by the Code for the case in which a religious of simple vows acted in the interest of the community with the superior's permission. The reason of the exception is evident. (*Can.* 536, § 2)

In the third case when the religious entered the contract of his own accord, and without his superior's permission, he is the responsible person and not the community. (*Can.* 536, § 3)

2. Responsibility of Other Persons

149. It may happen that a debt or obligation was contracted by religious for the benefit of someone else. A religious community or one of its members might contract a debt in order to relieve the pressing needs of some friend or they might go surety for him. In such cases, although the community or the individual is responsible towards the creditor with whom the

contract was made, the other person in whose behalf they made it is responsible towards the community or the individual, respectively. Hence while creditors may exact from the community or the individual the fulfilment of the contract, the latter have in their turn the right to exact from the other person the reimbursement of the amount they procured for his benefit. Thus for instance if a religious of simple vows borrowed money in order to lend it to a friend, he is the one who is bound to make restitution to the creditor, but he has the right to be reimbursed by his friend. This however would not be the case, if in contracting a debt or assuming an obligation for another person, the community or the individual intended to make to the latter a free gift without obligation of restitution. In a case like this, the other person accepted the sum without assuming any obligation towards the givers and these would have no action against him. (Can. 536, § 4)

3. Precautions in Assuming the Responsibility

150. *Canon* 536 closes with an admonition by which superiors are warned not to grant permissions for contracting debts unless beforehand they make sure of two points. First the ordinary income of the community must be such that it will be possible to pay the interest due on the loan. Moreover there must be at hand a kind of sinking fund by means of which the capital itself may be extinguished at a not too remote date. The "*amortizatio*" mentioned in the Latin text of the canon is precisely the gradual diminution of a debt by means of a sinking fund. However, it does not seem to be necessary that this fund be actually in the possession of the community at the time when the debt is contracted, provided the ordinary sources of revenue be such that there will always be a surplus for gradually extinguishing the debt. (*Can.* 536, § 5)

V. FACULTY TO MAKE GIFTS

CANON 537

"*Bestowal of gifts from what belongs to a house, province or religious institute, is not permitted, except by way of almsgiving or for other just cause with permission of the superior and in keeping with the constitutions.*" (*Can.* 537)

151. *Canon* 537 lays down the general rule that no one is allowed to make donations out of the property belonging to the house, province or institute. But this rule is not so absolute as to forbid donations altogether. These, then, in accordance with what follows in the canon, are allowed provided three conditions are fulfilled. There must be some just reason for making the donation. Moreover the permission of the superior has to be obtained. Finally all has to be done according to the constitutions. A just reason for making moderate donations may be to show gratitude to benefactors; to secure the good will of patrons for the

benefit of the community or of the charitable institutions attached to it. The relief of the poor by almsgiving is an act of virtue and consequently is always a good reason. The permission of the superior is necessary because there is question of property belonging to the community, of which subjects, as individuals, cannot validly dispose. But superiors themselves are only administrators, not owners of said property, and their power may be limited or at least regulated by the constitutions or legally established customs. Hence in making donations and in giving permission to make them, they must observe what the constitutions or custom prescribe both with regard to the amount to be given out and the formalities to be fulfilled by them, if for instance they are required to hear the advice or obtain the consent of their council. If the constitutions as well as existing customs leave them free, they will always have to act with prudence and moderation and see that the donations be in keeping with the economical state of the community.

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